DOCUMENT RESUME

ED 109 823 80 EA 007 411

AUTHOR	Peterson, Jon, Ed.
TITLE	Public Policy and State Education Agency Roles in Teacher Labor Relations.
INSTITUTION	Upper Midwestern Region Interstate Project, Madison, Wis.
SPONS AGENCY	Bureau of Elementary and Secondary Education (DHEW/OE), Washington, D.C.
PUB DATE	75
NOTE	86p.; Pages 19, 36, and 37 will reproduce poorly
EDRS PRICE	MF-$0.76 HC-$4.43 PLUS POSTAGE
DESCRIPTORS	*Agency Role; Collective Bargaining; *Conference Reports; Elementary Secondary Education; *Employer Employee Relationship; Government Role; Industrial Relations; *State Agencies; Symposia; *Teacher Employment
IDENTIFIERS	Elementary Secondary Education Act Title V; ESEA Title V

ABSTRACT

This publication contains the edited transcripts of presentations made at the National Symposium on Public Policy and State Education Agency Roles in Teacher Labor Relations in May 1974. The symposium explored various aspects of teacher collective bargaining and the present and possible roles of state education agencies. Included in the booklet are presentations on teacher labor relations by Myron Lieberman and David Selden, a presentation on legislative reactions to anarchy in teacher labor relations by California State Senator George Moscone, a panel discussion between state agency representatives Vito Vianco (Illinois), Archie Buchmiller (Wisconsin), and Robert Helsby (New York), presentations on current problems and future solutions in teacher labor relations by Donald Wollett and Wesley Wildman, a presentation on the federal perspective on teacher labor relations by Gilbert Donahue, a conference overview by Byron Hansford, and a summary of the symposium by Myron Lieberman. (Author/JG)

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PUBLIC POLICY AND STATE EDUCATION AGENCY ROLES IN TEACHER LABOR RELATIONS

An Upper Midwest Regional Interstate Research Project

1975

Interstate Project
for State Planning
and Program Consolidation

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Financed by funds provided under the Elementary and Secondary Education Act of 1965 (Public Law 89-10, Title V, Sec. 505) and the sponsoring states. The activity which is the subject of this report was supported in whole or in part by the U.S. Office of Education, Department of Health, Education and Welfare. However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Office of Education, and no official endorsement by the U.S. Office of Education should be inferred.

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INTRODUCTION

A recent survey of State Education Agencies (SEAs) indicated such agencies perform a variety of roles in teacher labor relations, both at state and local levels. In order to further explore the involvement of SEAs in the area, the Upper Midwest Regional Interstate Research Project, a consortium of the SEAs of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin, awarded a grant to the Illinois Office of the Superintendent of Public Instruction to plan a national meeting.

The National Symposium on Public Policy and State Education Agency Roles In Teacher Labor Relations was held in Chicago in May 1974. The symposium explored various aspects of teacher collective bargaining and the present and possible roles of SEAs through a series of presentations by recognized experts and small, interest group discussions. These proceedings are the edited transcripts of tapes made of the major addresses.

> Myron Lieberman placed teacher bargaining in historic perspective by describing pre-bargaining procedures utilized by educators to achieve employment rights, particularly state legislation;
>
> David Selden commented on the major factors which have given impetus to teacher bargaining since 1962;
>
> George Moscone, Majority Leader of the California Senate, gave a case history of the dynamics surrounding the legislative enactment of a teacher collective bargaining bill;
>
> Vito Bianco, Illinois, and Archie Buchmiller, Wisconsin, related specific roles played by SEAs in states with and without legislation covering teacher bargaining, and Robert Helsby, New York Public Employment Relations Board, described some of the problems in public sector management arising from the shift in personnel relations from traditional to bargaining oriented.
>
> Professor Donald Wollett gave case examples and commented on emerging legal problems in teacher-board bargaining, and Professor Wesley Wildman offered interesting contrasts between private sector labor relations and teacher labor relations;
>
> Gilbert Donahue, U.S. Department of Labor, shared his views of a federal perspective on teacher bargaining, including pending federal legislation;
>
> Dr. Byron Hansford chaired a panel of Symposium participants representing different SEAs reacting to the Symposium.

It is my hope that these proceedings will stimulate as much thought and discussion to the reader relative to the roles of SEAs in teacher labor relations as the original speeches did among the symposium participants.

Sincerely,

Jon Peterson

Jon Peterson
Proceedings Editor and
  Symposium Chairman
Division of Governmental Relations
Illinois Department of Education

TEACHER LABOR RELATIONS: PERSPECTIVE AND FOCUS

Dr. Myron Lieberman
City University of New York

I want to give some perspective on teacher bargaining and relate it as clearly as I can to the role of state departments of education, and I want to relate it not only to the role in teacher bargaining, but to the role in legislation on that subject.

At what I know is a high risk, even almost a certainty of repetition for some of you, I just want to first say what I mean by collective negotiations, or collective bargaining, and take just three to five minutes on where it is in the field of education. I am going to refer to collective negotiations or collective bargaining in this context by teachers as a process whereby the representatives of the teachers and school boards meet together at reasonable times and places and make offers and counter-offers in good faith concerning terms and conditions of employment with neither party required to make a concession or agree to a proposal made by the other. Now the process of determining employment relations in education in 1962, as I am sure most of you know; the first significant collective agreement was the one reached in New York City in 1962, and it is rather interesting that today, twelve years later, over seventy percent of the teachers in this country work pursuant to collective agreements, and that is really a revolution in employment relations, and we can't, at least during my time, go into all of the ramifications, many of which I think are still not very well understood. But, today, for most teachers, employment relations are determined by a contract between their organization and the school board.

The question arises as to why this movement spread so rapidly in the field of education. Sometimes I think the answer is to be found in the story about the nun who joined a very strict religious order. This order was so strict that you could say only two words every ten years. And when the nun, one sister, had been in the order ten years, she was called in and the importance of the occasion was explained, and she was asked what she had to say, and she said "food bad", and the Mother Superior thanked her and dismissed her. And ten years later she was called in again, and they went through the same procedure, etc., and she was asked what she had to say, and she said "no heat", and she was dismissed. And then, sure enough, ten years later she was called in and asked what she had to say, and she said "I quit". And the Mother Superior said, "It's about time. You have done nothing but complain ever since you have been in this order". Well, I guess a lot of teachers feel that story has a lot of bearing on why teacher negotiations have spread.

But, initially, there are two or three factors here that have to be taken into account. One is, as you know, public employees were not covered by federal labor relations acts, or at least were not deemed to have been covered, and so for state and local public employees - their employment situation varied enormously from state to state and between states. And it is rather interesting, as you know, and I am sure we will hear more from Mr. Donahue, that there are now proposals in the Congress to have a federal law that would cover state and local public employment. Now what we have in teacher bargaining is really a shift from a legislative to a contractual approach to teacher conditions of employment, and this is extremely important. I don't think its implications have been well understood, and certainly not by State Departments of Education. You see, prior to the teacher bargaining, the teacher organizations tried to improve terms and conditions of employment for teachers by legislation. If you wanted to raise teachers' salaries, the way you did that was to get a state minimum salary law, or to raise one, if you had it. If you wanted a duty-free lunch period, you tried to get your legislature to pass a "right to eat" law, which mandated every teacher would get a duty-free lunch period, etc.

That was the thrust of the teacher effort prior to 1962. And this, by the way, had enormous consequences for the nature of teacher organizations. In those days, pre-bargaining days, administrators were members of teacher organizations and often were the ones that put the pressure on teachers to join. Now, obviously, an administrator would not do that; he wouldn't encourage teachers to join an organization that was going to resist him at the local level concerning salaries or terms and conditions of employment. That just doesn't figure, therefore, what was the rationale, usually, for encouraging people to join? Well, the rationale was that the teacher organizations would put their efforts into the state legislation would, presumably, benefit everybody, including the administrators. Like, let's say, an increase in state aid. Administrators and teachers ordinarily do not have any disagreement over that. And if you look at the budgets of teacher organizations, their budgets had minimal dues at the local level, the highest dues at the state level, and then national dues were relatively low, but in between. But the big thrust was at the state level. Local dues were often 50 cents or $1.00 per year, or whatever. And the staff - you go back to 1960 - very, very few local teacher organizations had any staff - full-time staff. As a matter of fact, I was on the Executive Board of the New York local back in the late 50's, and the one full-time staff member that it had was David Selden for awhile. It has now over 50 professional staff and 50 others, and that doesn't count all the people in the welfare fund who, in effect, are union appointees, although that may be overstating it some, but not a lot, and that is only an illustration of what's happened nationally.

Now the reason for the change to have teacher employment relations determined by collective agreement, has certain advantages over having them determined by legislation, and the teachers finally woke up to that, as have a number of other groups. For example, even as late as the late 60's, when I was out in California and people there from the California Teachers' Association would say to me, "Well, we have looked at some of these agreements elsewhere in the country and we don't see that they give teachers anything that we don't have here already by legislation. They all specify a duty-free lunch period, and we have got that by law here in California. What do we need a collective agreement for?" Okay what that overlooks is that your ability to enforce that right is much stronger when it is in a contract, especially if that contract has binding arbitration, than by law. The average teacher would feel like a "kook" going to court because he did not get a duty-free lunch period, as spelled out by state law. Let's say that the Board cuts five minutes into a state-mandated, thirty-minute, duty-free lunch period. Well, you know that teacher isn't going to go to court to enforce that. And the record shows that those legislative rights often were not enforced.

On the other hand, if you have a collective agreement, and there is a grievance procedure, and that grievance procedure culminates in binding arbitration, that right can be enforced much more expeditiously. And it just struck me as I went around the country in the late 60's, and you asked most teachers, "Would you rather have a duty-free lunch period by state law or in a collective agreement?" Most of them would say "have by state law." They felt that was more solid, etc., and it wasn't.

Furthermore, and this is crucially important, whether you even got a duty-free lunch period, in many cases, was dependent on your strength at the local level. If you wait for a state law, you might wait forever. On the other hand, if you had enough strength at the local level to get that concession from your local school board, why wait until the whole state had it? See what I mean? You might never get it or get it in twenty years, or whatever. And so, the teachers finally woke up to the fact that to have effective representation you need it at the local level, as well as at the state and national level. And so, in effect, the collective negotiations movement is simply a recognition of the fact that for effective representation you ought to have a strong local organization, as well as a strong state and national. And there are things that can be done locally that cannot be done, or cannot be done as well, at the state level.

So, it is against this background of the chaos and the vacuum in state relations, and then over a period of time the teachers began to realize, partly as a result of organization rivalry, that there were certain benefits in negotiated agreements that they had not really been aware of. And I might add that actually collective bargaining was really opposed by most teachers in both N.E.A. and A.F.T., although for somewhat different reasons in the 50's, and even in the early 60's. The A.F.T. was afraid that because it was a minority organization that if the teachers chose a bargaining representative and they chose the Association, the A.F.T. would be frozen out. And so, it is interesting to look back today - and a lot of people that, well, when you are sort of riding a movement - you know, that sort of reminds you of. . .Bunny Smith, who was my advisor at Illinois, once made a reference to ants on a log going down the river who think they are steering the log, you know. Well, a lot of people who supported something like collective negotiations would have probably come up on the right side because it's happening in the other areas of public employment.

So, this is, in very broad strokes I think, what has happened as far as teacher employment relations are concerned - the shift from the legislative approach to a bargaining approach. And, I might add, one of the ironies of this is that as you do this, you enormously strengthen the hands of teachers at the legislative level. The reason being that bargaining has resulted in the enormous increase in the number of people who work full-time for the teachers. And that has given them a political capability that they did not have before. Prior to the 1960's, the reason the N.E.A. was really very ineffectual politically - there were two reasons - one was they kept on preaching all the time, as do most educational administrators, you know, this stuff about education being a non-partisan activity of government. Well then, you can't go running out on election day and get the votes if you do that. And so, the other thing was the N.E.A. could go to Congress, but the Congressmen knew that, let's say, N.E.A. or A.F.T. did not have the troops at the local level to deliver any votes. Now that has changed very dramatically because of bargaining that is bringing about this increase in full-time representation at the local level. The teachers now have a political capability that did not exist in the pre-bargaining days. And that has something also to do with the way that bargaining legislation will be shaped in the future.

Now I want to come to the roles of State Departments of Education. First, I am going to give you a terrific piece of advice. The only trouble with it is that it is going to be too late to do any of you any good - most of you. And that is this - if you are going to have a bargaining law, what you should do is to repeal or amend the pre-bargaining legislation that is inconsistent with the bargaining law. If you are going to say to teachers, okay, your employment relations are going to be determined by contract, fine. Then what the legislatures should have done at the same time is to tie that new law to the repeal or amendment of all the benefits gain by teachers legislatively. If you want those benefits, go get them at the bargaining table.

This has not been done; in state after state now there are all kinds of confusions and problems now because the legislatures did not do this. And one reason they did not do it is because educational administrators and State Departments of Education were asleep at the switch. For example, there are states where any teacher who is **aggrieved** can appeal to the State Commissioner. Rhode Island is such a state; New York is such a state, and I know there are others. Well, if you say, okay, you are going to have bargaining, you are going to have a contract, and now if you have a grievance, it is up to the teacher to negotiate a grievance procedure. You don't want to give people two remedies. As a matter of fact, they now have three remedies. Sometimes they can go to a grievance procedure, sometimes they can go to a state-mandated appeal to the commissioner, or they may go to the courts. Now the philosophy of bargaining is that employment relations are to be settled through the procedure they work out in the agreement.

In Louisiana there is a state-mandated Sabbatical leave policy. Wow! That is really something. By state law in Louisiana, every certificated employee is entitled to a one-semester Sabbatical leave, at least at half pay after six semesters on the job - and that is automatic. You have to give it. And, of course, school boards don't get any concessions for that. That is already given by law. If it was at the bargaining table, you know, and the teachers wanted a Sabbatical, you could say, okay, I will give you a Sabbatical if you will give me something else in return. They can't do that anymore because it is there by law, and the application of that by law is so inefficient because you get it automatically. If you happen to hire five principals and twenty science teachers, etc., in a certain year and they all come up for a Sabbatical at the same time, that is just too bad; because legally they are entitled to it when their time comes. So you have destroyed administrative flexibility that way and you have lost something from the bargaining process. I have, in fact, an illustration that I used - and maybe when Bob Helsby comes on he would talk to it - but I did a study a few years ago on the impact of the Taylor Law on school administration in New York. And, you know, one of the things that struck me was that in the private sector when management gives retirement benefits it can do so and get something from it; but that is not true in education, because retirement benefits are mandated legislatively.

So when you go to the bargaining tables with the teachers, that is already there. They don't have to give you any concessions for getting that. But we are in a situation in New York where New York City was in a little different category. Their retirement benefits had to be negotiated and then approved by the legislature. So the irony there was that in New York the City of New York could get some benefits at the bargaining table for giving a retirement benefit, whereas upstate they were already there. And so I came to the conclusion that it might be a good idea to bargain these on a statewide basis and say, okay, we will improve the retirement fund if you get rid of statewide tenure, or something of that nature.

At any rate, no state, to my knowledge, in enacting a bargaining law has done this - has said, all right, we are going to take a look at all the pre-bargaining legislation that bears on the terms and conditions of employment and said that is going to be repealed, this is going to be amended, etc., and so what we have today is a real mess - worse in some states than in others - of this mix of this pre-bargaining legislation that deals with terms and conditions of employment and the bargaining law itself, and those of you who are in states where you do not have a bargaining law yet, I think you would be well advised to do this, because you will avoid all kinds of problems later on, or your local boards can if this is done. Plus the fact, now, as you know, I am sure, management ordinarily is not the initiator of either bargaining legislation or of bargaining itself. This is largely an employee initiative. And I think there are a lot of situations where school management would be in a much better position, instead of opposing a bargaining law, if it said, we will go along with the bargaining law if such and such benefits were repealed, and/or amended, or whatever.

Now there is another side of this coin that I want to emphasize. There are a lot of states where management tries to take certain things off the scope of bargaining, by law. And I think that is wrong, too. What I am saying is, if you have something that is called a clean bargaining bill, it would probably not give teachers certain benefits by law that they ought to win at the bargaining table, and, at the same time, it would not give management the immunity that it frequently tries to have of taking things off the table by state law. There are places where school boards have said that class size is not negotiable, and the school calendar, etc. I think that is really very weak. I think they are trying to get out of their responsibility to bargain in good faith. They are trying to avoid the responsibility to bargain in good faith. They are trying to avoid the responsibility of saying "No" if that is what they really believe, by having those items declared non-negotiable. You see what I mean? I am saying, I think that is wrong on both sides. The teachers ought to have bargaining rights in my opinion, and then neither management nor teachers should be able to either take things off the bargaining table or to get the benefits automatically. Let the bargaining relationship settle the employment relations if that is the way it is to be done. You know, I have seen states where school boards have said, "OK, we will go along with bargaining, but the following items are not negotiable", and there would be a long laundry list of items, that, I think by any reasonable standard, have to be considered terms and conditions of employment, but they would like to not have the responsibility of going to the bargaining table. And I don't think that is right either.

Well, now, it is against this background that I would raise the question with you of what is the appropriate role for a State Department of Education. Well, what are the possibilities? It could be teacher advocate; it could be the management advocate; or it could stay out of it altogether, lock, stock, and barrel. Are there any other alternatives? I don't know that there are any other alternatives that you could put in there, but those seem to be the four possibilities. And, looked at in that way, I think it is, to me at least, not too dificult to see where State Departments of Education should go.

First of all, what about being an impartial third party? Well, first and foremost, I don't believe that role is or should be acceptable to teachers. An impartial third party should not be a party that has constant dealings with one side, but not the other in a different context. And most State Departments of Education are not staffed or equipped to play this role. And I think the teacher attitude is understandable, even though it may be in error in particular states. In other words, I would admit that it might be possible for a State Department of Education to say, "Well, we are not staffed now, but we could go out and get the staff; we are not geared to it, but we could change all of that," you see. But I sort of doubt it. And I don't think it would be advisable for a number of other public policy reasons. I know if I certainly were a leader of a teacher organization, or a teacher, I would hate to have as an impartial third party an agency that was dealing with the school board over a variety of issues all the time. I think you can understand how teachers would feel.

Now this - by the way - just to go back very briefly - this got caught up, you know, in the controversy between the N.E.A. and the A.F.T. - it sort of died out now - and maybe Dave Selden is here and would want to comment on this. Back in the late 60's when the N.E.A. woke up and found out that it just couldn't oppose collective bargaining - the organization was disappearing, so it had to come up with something at the local level. They couldn't embrace collective bargaining because the A.F.T. had already done this. What were they going to do? Well, they said, "We are for collective negotiation". So the inevitable question - what's the difference between collective negotiation and collective bargaining? Well, one of the alleged differences was: they said bargaining is handled by a labor relations agency, but we think education is special and unique and it ought to be handled in educational channels. So there was a period of time there when N.E.A., and I think it grew purely and simply out of organizational rivalry, was advocating that employment relations be monitored, or supervised, or regulated by the State Educational Agencies, and that, of course, would have meant the State Department of Education. There was also, I think, a suspicion that these agencies would be oriented to the A.F.L.-C.I.O. or the A.F.T. Now I think most of that has died out, although it may still be a factor in some states. In fact, I will be interested in what Dave has to say about it. That is where you got some of the arguments from the teachers' side about having state departments of education involved in the regulation of employment relations.

Well, what about being the teacher advocate? I think that is clearly inappropriate for so many reasons. First of all, if you represent teachers, teachers have to choose you; they have to be able to control you. I don't want to choose a lawyer that goes off on his own and is not responsible to me. That is what the N.E.A. and the A.F.T. are for. They are the teachers' representatives and the teachers' advocates. I think there is just no need to dwell on this, this is simply not the function of a State Department of Education. I am not saying in a particular case it might not agree that a teacher might have a just cause, but I am saying that structurally and functionally, its job is not to represent teachers. That is the job of teacher organizations.

That leaves two other alternatives. One - withdraw completely. I don't advocate that. I do think the role of the state department of education should be really as a management back-up and information service. We ought to back up management with data and with training services, and etc. I just want to speak to this very briefly and then I will be closing. One of the anomalies of teacher bargaining is that the employees are much better prepared and staffed than management. Usually, in other sectors of the economy, management has got more resources to draw upon. It's not as ill-equipped as is school management. I could go on all morning with some horror stories and Wes Wildman is here and he could give you a lot more than I could. Where is the management research aim? I bargain for a little school board in New Jersey - a very small board. Just a few weeks ago we had this problem. We were negotiating over the salaries of principals, because by New Jersey law, which I think is a bad law in this respect, principals and supervisors can bargain with the board. The question was over the salary of the principal. The organization representing this said, "Well, look, we have the lowest salary in our area for principals", and they put that out and that is true, they did. The superintendent, on his own, had to go out and find out, first of all that our principal had the lowest enrollment of any school in the area, and school enrollment is a legitimate factor to be considered. He also discovered, on his own, that our principal had less experience than all but one of the principals in the area, and that if you used these two factors in any reasonable way, our principal was not so much the lowest, but he was really getting near the top, on the experience factor alone.

The superintendent had to do this on his own. There was no back-up agency collecting data and helping management. There was no training agency. There was a pretty good school board organization in New Jersey. My feeling is that if there is an active role, it ought to be, clearly and unashamedly and, hopefully, effectively be a back-up agency for management. I just can't believe that in other sectors management is so handicapped and so inefficient.

I want to add just one other thing and then I will be done. I have a grant from the National Institute of Education on state legal constraints on educational productivity. My argument was "everybody is trying to build a better mouse trap, but maybe we could conduct education a lot more efficiently than we do if we could get rid of some of the legal constraints that now exist. For example, administrative tenure. We hear all of this stuff about how terrible teacher tenure is. Well, if that is terrible, it seems to me that administrative tenure is a much more serious problem, and I think it is. How much is that costing us? I did not realize why teacher tenure doesn't have much to fear. There are about twenty-nine states that have administrative tenure. No wonder the administrators who are using teacher tenure, as an excuse I think in most cases, aren't really all that anxious to lead the charge. Certainly in New Jersey, they are not. Even the superintendents have tenure in New Jersey.

I mentioned this law in Louisiana about state-mandated Sabbatical, and there is just an enormous range of legislation that seems to me that almost forces us to be inefficient in education. And, by the way, in the two days that I am here I would like to hear if you have such in your state or what your views are on this subject. That is one of the reasons that I was very anxious to come. It seems to me that this fits into what the concept of what the appropriate role of a state department of education should be. I say that most teacher organization leaders, certainly the most experienced ones, recognize the need for effective management. I think of the labor movement generally in this country, it does not want to manage schools. Sometimes there are a few teacher organizational leaders who think this and are confused by it, but most of them recognize that just as there is a need for effective representation of teachers, there is also a need for effective management. It seems to me that it is in that area that we would find the most appropriate role for the state department of education. Thank you very much.

TEACHER LABOR RELATIONS: THE RULES OF THE GAME HAVE CHANGED

David Selden, President, A.F.T.

I remember hearing Mike Lieberman at a conference the New York Teachers Guild gave up at Haverstaw. Mike was probably one of the first people in the country to get talking about collective bargaining but he didn't use the term. His model was a medical profession and he was talking about control of entry into the profession and control of on-the-job conditions in the same way that doctors control conditions. If you're not a member of the Medical Associations, you just don't get into the hospitals. And a lot of other things happen to you along the way. They have a different way of going about controlling the conditions they are confronted with and collective bargaining is not appropriate to them because for the most part they don't work in groups for single employers. Some of them do, but most of them, it's just the other way around, they work as individuals for individual employers. I remember Mike was talking about the necessity for teachers to establish codes of ethics or a code of ethics and this was his idea on how the teachers would control the conditions on the job. Nobody knew what he was talking about because the term "code of ethics" is such an anathema to teachers that they never got beyond the term. The minute he said the code of ethics at Haverstaw Conference, the pack was on him and he never really got it straightened out. What he meant was that it would be unethical to teach a class with more than 30 pupils and he just wouldn't teach it. It would be unethical to work with people who didn't belong to the union or the organization, just like doctors won't practice with people that don't belong to the association, just like lawyers have got to belong to the bar association.

Well, it was an idea, it might have been appropriate at one time to teacher bargaining. I remember sometime in the late 1950's, a fellow came into my office at the New York Teachers' Guild, he wanted us to organize Mathematics teachers only. His idea was that there was a shortage of Mathematics teachers and if you organize them and then you could bargain with school boards or the state or anybody you wanted to after you get them organized and you write your own ticket for Mathematics teachers. You'd have kind of a craft union of Mathematics teachers, and you'd really have a lot of bargaining clout without having a very large mass organization. Same thing could have been done for Science teachers. That was one route to travel, I suppose, in trying to get teachers some bargaining leverage in what to them was an increasingly aggravating situation following World War II. Inflation was rampant at least we thought it was, we didn't know what rampant meant until lately, ... then the salaries were not keeping pace by any means. The baby boom was putting more and more kids under the schools and the class size was getting bigger and urban society was deteriorating and the American society as a whole was becoming more and more turbulent. These problems were invading the classroom on a daily basis and teachers found themselves teaching more and enjoying it less and getting paid less for it, too, in real dollars.

When collective bargaining finally emerged in New York City at the beginning of 1962, only that long ago you know, it was mainly as a result of conditions that existed in the United States and made the situation right. New York City was a tinder box at that point and there had been an escalation of militant actions by teachers over a period of six or seven years; there has been a nightschool strike, and finally there was a one day strike of teachers just before the national election in which Kennedy was elected. It wasn't only a surprise to teachers and school board people and education people in general, it was a surprise to the labor movement too. I remember coming up to that strike date of November 6 and there was rather a momentus meeting held in the Commodore Hotel with George Meany. George Meany likes to meet in the Commodore because he claims he put in the plumbing in the Commodore Hotel. At any rate Charlie Cogan, who was then the President of the United Federation of Teachers, and I, who was kind of the chief factotum around there, and a couple of other people from our bargaining committee, met with Harry Van Arsdale, then and now a chief labor person in the state, at least New York City. Meany wanted to know how many members we had. We lied, we said that we had about 5,000 we had about 3,000. He said, "Now, how many teachers are there?" and I said 45,000 and he said "You mean they won't pay dues to you but they'll strike for you?" We didn't bat an eye, and said "Yes, Sir, we think that's true." So then he turned to Van Arsdale and he said, "Harry, can't you or somebody blow the whistle on these guys?" It wasn't a very popular thing. I looked like a loser.

We were out for one day, we got 10,000 people out, but of course it was not the best-chosen day from the standpoint of George Meany and the rest of the organized labor because they had put a lot of money into the election of Kennedy and here were we going to call a strike on the day before election and it would seem to discredit the whole labor movement. Well, that strike was kind of an inconclusive thing as a one dayer. Election Day in New York State is a holiday, and also Veteran's Day came in that week, we called the strike that week purposely because we felt we could get two free strike days because of the holidays. We went back in with the fact finding committee, and that kind of a settlement would be unthinkable today after a one day strike, maybe after a month or two you might accept something like that if you get back alive, but not with just a one day strike.

Out of that strike came the building of the organization. Part of the folk lore of this thing is that the Board of Education and the powers that just fell over backwards after that strike and we got collective bargaining. That isn't true at all. It took us a year and a half after that before we got the election. Then we had another one day strike, this time over money. But, as Mike was saying, those days seem like ancient history now and yet it is only twelve years ago and now we have about fifteen states with all-inclusive collective bargaining laws where almost every district in the state has a comprehensive bargaining contract with its school district. We have a number of other states, that have kinds of rudimentary bargaining laws which provide for recognition in some form or fashion with a lot of restrictions put on. And I'd say at the present time, just a rough guess, I haven't researched this, about three-fourths of the teachers in the country, legally, have collective bargaining. Now the people who don't have legal collective bargaining are mostly in the South and on the West coast.

It's a tremendous development and we gained a great deal of experience over the past twelve years. Yet collective bargaining is still only in its very primitive state, in my estimation. It really isn't our fault, the fault of anyone in particular, this kind of grows out the nature of the education industry. Education looked at as an industry, I hope I'm not duplicating too much what Mike Lieberman siad, I didn't hear the first ten minutes and I have a feeling that he may have said some of these things, but education as an industry is characterized by decentralization. As an institution it's going through a lot of internal stress. The governance of education is still largely local by local school boards, there are 18,000 of them around the country. The financing of education this year for the first time went over the fifty-fifty mark nationwide. Fifty percent of the cost of education is now borne by the states. And the federal government now bears about seven percent and the rest is from local taxation and you can see that this is a situation that places a great deal of constraint on the governance, the structure of education.

First of all I want to give a nod to my topic which I didn't really choose, but says the rules of the game have changed. I really don't think the rules are changed so much, the circumstances though are changed all the time, we're in the process of development and I've listed four things that I think characterize the present phase collective bargaining is in. These are things as perceived by a teacher organization official. First, small strikes are not very practical. Strikes in school districts of under 150 teachers are, in my estimation, trememdous gambles. You may win some but you're going to lose more than you win. We found that out about three years ago, it's been quietly discussed in union circles, but the word hasn't gotten over to the Association. We were wiped out over in Chicago Heights where we had a strike of about 35 teachers out of 65. The school board hired scabs and the schools kept right on operating and for those teachers we had to help find jobs for them elsewhere in the area. As far as we're concerned, of course, that strike still goes on, but we don't know where the teachers are. We got wiped out in a strike of about 150 teachers in Minot, North Dakota, a relatively small district. Of course, the big question is what we were doing there in the first place, there was no other teacher union within 300 to 400 miles of Minot and there were we, the bargaining agent and not able to bargain and we finally got maneuvered into a strike situation and it was along towards the end of the year in May. The school board made very little pretence at bargaining and just left us standing. They finished out the school year with hired replacements and that was it. We had to find jobs for about 75 people who wanted to move out of Minot, and most of them got better jobs than they had had in Minot. I can't really see anything that would hold a person in a place like Minot anyway, but they did have to move and the lesson is to avoid small strikes even though you may at times have to get into them.

Hortonville, Wisconsin, the education association stomped around and went out on strike and 84 teachers have been fired. They're going to stay fired, you know, they're not going to be able to get back. It's not our strike, it's the Association. There's no way in which we can get those people back. What they were doing was against the law anyway, so they don't have any standing in court, they can't sue, they're guilty of neglect of duty and so they don't have any muscle. The town is too small, isolated and not in the very visible part of the nation so there's no public support. There's another strike up in New Hampshire, also an Association strike, I've forgotten the name of the place. We represented a little town by the name of Pennbrook and the Association represented a nearby town. Having learned from some of our bitter experiences, we advised the teachers to settle for almost the same thing that the teachers in the other district struck over and so our people in Pennbrook have a pretty good contract now, they're better off than before they went into collective bargaining. The people in this other town are just out. The town fathers turned the situation into a referendum on the strike and the teachers lost about 1,600 to 400. They let the people vote on whether or not the school board should give the teachers what they're asking. That's a neat trick, you'd better watch out for that one.

The second thing is not a change in the rules but a change in conditions. When we started in the collective bargaining era, the property tax still had a great deal of room for expansion. Now, that's still true, but not under the present rules of assessing property and setting tax rates. In many areas of the country, even in big cities where the budgets are more elastic than they are in a little so-called fiscally independent school district, this means that you've got the right not to tax. If you're right up at the limit and your state aid is fixed by formula, you can't go any further on property tax and you're really stuck, there's just no place to go. This money situation has a bearing on the bargaining and our union has been criticized a great deal for only thinking of salaries and fringe benefits, they say "why don't you do something for the kids?" That costs money too unless you're just going into change for change sake. There are a lot of educational reformers that talk about change they say it with a kind of reverential tone, you know, "Change" as though it meant something and change to what? I think I don't favor change for just the sake of change. I favor educational reform, it's a term that has a little more content and I have my own formula for what I mean by reform and I'm willing to tell people what I mean but not just talk about change. The money situation therefore, has resulted in the restriction of the scope of bargaining. People have been talking about teachers wanting to get into all sorts of management things and what has happened is that the restrictions on budget has come along and imposed their restrictions on the bargaining. You can't pay for those things anymore; you can't hire the staff, you can't accomplish many of the changes in the educational policy that would be good for kids.

This leads me to a third thing about scope of bargaining. There's an irony in this situation. The same people that point their fingers at the union and the Association and accuse us of being selfish and being only interested in salaries and fringe benefits for teachers and say you ought to be interested in the kids, are the same people who want to restrict the scope of bargaining and keep us out of the area of educational change. Personally my own motto is that there should be no limitations on the scope of bargaining. I agree with Mike there shouldn't be any restrictions on the scope of bargaining. The restrictions on the scope of bargaining have one major affect, and that is that they provide a lot of work for lawyers who otherwise, presumably, would be unemployed because you have to have them define those restrictions. You try to restrict the bargaining to wages, fringe benefits and working conditions. Well, what's a working condition? Class size is that a working condition? Oh no, that's educational policy. Well, you have to go to court to get that question settled. Generally speaking on the scope of bargaining in a sector like education where you're dealing with limitations on scope of bargaining are artificial, they're borrowed from private industry, where they do have some significance. For instance, in private industry, limitation on scope of bargaining generally apply to the fact that the union cannot control the process of manufacture, and also that the unit of production and the scale of production is beyond the purview of the union. These two factors are considered to be management problems and prerogatives. How many cars you're going to produce and when you're going to make them is what you have engineers for.

In education these things don't apply. You've got to take all the kids that come anyway, so there's no limitation, the market is there, it's a given quantity. The process is something that teachers should be concerned with. Oh, I would like to see them much more concerned about the process of education. I very much resent the tendency in education to say that you've got to have a license to think in certain areas, that you can't be an administrator unless you've got the license for it, or you can't do this or you can't do that and you can't be a curriculum coordinator unless you've got the license. I think all teachers ought to be encouraged to accept responsibility in all these areas and to put forward their best thinking and best energy to develop ways to improve the quality of the enterprise.

The fourth change that I see that has come about over the past twelve years since collective bargaining first began in education in the United States is the Board of Education counterattack. This is a thing that's kind of a throwback to the 1920's when collective bargaining was when employers used to get together and study how they were going to get to the union. Well, the Board of Education people and superintendent people travel around on public funds and they hold conferences and they hire people like Education Teachers Negotiating Service. Some of these people and some of these other outfits tell them how to give it to the union. Boards complain about the adversary relationship that seems to be the basis for collective bargaining, but the Boards themselves are helping to create this adversary relationship by taking lists of counterdemands that they place on the table, many times without really thinking that there's any necessity for these things, but it's a good idea to have something to give away when you get down to the closing hours or days of a bargaining situation. There may be some merit in that but I think it's on the whole irresponsible. Boards of Education as well as unions have a responsibility to bargain in good faith, not asking for something unless there is a need for it. This is just a counterattack against the association and the unions, its anti-unionism and we have laws on the books of states which say that associations and unions are good and that we need them and we have state bodies to regulate the relationship. We ought not to debate the process by getting carried away. People are making a lot of money, some people, I guess, out of telling you how to play the game. It's not a game. It's a very serious process by which educational conditions are determined and the income and well-being of a lot of good, solid well-being middle class Americans are determined.

Now, what is the future? Well, if you look at these things: the undesirability of small strikes, the tight money at the local level, the exclusion of teachers from bargaining by limitations on the scope of bargaining, and the counterattack by local school boards, you can see that these are really reflections of the strain within the educational enterprise. Localism in education, at least in the financing of education, is rapidly becoming outmoded. I think we ought to recognize that fact and try to rationalize the education industry. Now there are a lot of industries in the United States that were decentralized more than education and some of those industries now bargain nationwide contracts.

I remember a very humorous scene at the time of the first nationwide truckers contract. There were thousands of trucking companies involved and the teamsters had contracts with many or most of them, certainly with the major ones, but they didn't have any national, standard contract. So the teamsters had to go in and organize the employers. The employers associations were organized on a nationwide basis and then the teamsters were able to bargain with them and sign their first national contract. I remember being in Chicago in a hotel room and seeing a scene shown on television and they were getting ready for the first signing of the contract and the television reporters just filmed the whole scene and here's Hoffa running around lining up the employers for the picture, "You stand there, Joe, and you stand there," he gets them all set up and when he's ready, he steps into the picture and says, "okay, roll em." Well, in a way, we probably are going to have to do that with education. Conant many years ago pointed out this defect in educational governance and as a result of his observations, we have the Education Commission of the States, which came out of common concerns in our federal system of government. You've got to find some way to make cooperation possible between the separate units of the industry. A letter came out from Terry Sanford and it was given to me to answer, I was assistant to the President, and I said we would go along with the idea, but I was afraid that it might lead to a search for the lowest common denominator and in some respects this has been true. It's an exchange medium and has some good publications, but it doesn't really move the way some people had hoped it would move. The key is to have the association organize the education industry but first the associations have to organize themselves.

We have people in both the A.F.T. and N.E.A. with very limited vision, in my estimation, who may cause us to really miss the boat on this thing. I am bitterly disappointed that the negotiations between the N.E.A. and the A.F.T. have broken down. I don't see any prospect of renewing those negotiations in the very near future; both sides now are preoccupied with internal matters. In the A.F.T., of course, all of you know I'm running for re-election, I don't have a very good prospect of making it. My opponent, Al Shanker, has other fish to try, and becoming President of A.F.T., I think, is just a stop along the way to some other destination that he has in mind and merging the two organizations is not a part of what he wants to do. He is looking for a future more I think in the labor movement at large, not necessarily to take Meany's place. I don't know whether he thinks of that or not, I never asked him, as being a mover, and shaker in the labor movement itself. Meanwhile, chipping away at the association and knocking off a district here and a district there and like other unions organize, you see, I think that's a very good limited vision. Similarly on the N.E.A. side, I find that the N.E.A. is paralyzed by its own internal situation. N.E.A. is in the process of transition from its original executive style of operation, where you have a President for a year and every President is a lame duck; to a new situation. James Harris, when he becomes President in July, will be the last President-Elect to become President of the N.E.A. Now, he is eligible to run for re-election a year after that and if he's re-elected, it's a two year term and he can run for two more of those, a total of seven years and this fact creates an entirely different dynamic within the N.E.A. For one thing, I've kidded with Terry Herndon, the Executive Secretary, when I ask him if he was going to run for President, and, as you can see, the role of the Executive Secretary is going to change. The result is that everybody is very cautious and we don't want to do anything that might eliminate the block of voters in the N.E.A.

Furthermore, the N.E.A. has set a goal of two million members by 1975, I think they will probably achieve that. I don't mean that is going to be any disadvantage to us, most of these people are already within the state or local associations anyway and what they're doing is unifying their membership and getting them all into the national, the N.E.A. Their process of unification is being pushed very heavily and the **apparatus of the organization** is completely involved in this thing. Now, we're going to give them heat wherever we can. They've got trouble in Missouri, Florida and Wisconsin. We are picking up members in those states very rapidly. We're in the competition between the associations and I think we're going to do fine, we've got the strong points. A good example, in Wisconsin when we lost Milwaukee we really lost that state and we've been fishing around out in the boondocks for the past five or ten years since we lost Milwaukee and we haven't been able to make it because we didn't have the big one, we didn't have the strong point. This is organizational warfare now and I'm giving you a little inside look that is obvious to everybody. Now there is a chance maybe that Milwaukee will fall apart, will switch over to the A.F.T. and we're helping them all we can and so we've got some possibilities in Wisconsin again.

Well, the competition between the two organizations is as bad now as it was in the 1960's, but it was absolutely essential. Teachers, children, everybody benefited from the competition between the two organizations. Today that's not so. Dues are higher than they used to or need to be and both organizations spend at least half their budget in this effort. We have a budget of seven and a half million, and at least half our budget is spent on this competition. Stupid, yet we have to spend it to survive. The N.E.A. spends a like amount out of its budget, which is many times ours, on the competition and it has its wheels spinning at the present stage. The forces of teacher militancy have been set in motion and merging the two organizations isn't going to stop that. There's going to be a militant teacher movement within a merged organization and the time is long overdue, there are other things. Because of the competition, the bargaining agent, according to the "out" organization, can never do anything right. So it means that every settlement that is made is attacked by the other organization whether it is good or bad. It's just par for the course, you're expected to do that. When you are coming into bargaining representation elections, you look for issues and if there aren't any there, you make them up, and this is bad for the schools; it increases the tension and turbulence of the situation and it would be eliminated by merging the two organizations. Everbody would benefit from it.

Now the real reason for merging the two organizations, in my estimation is that only in this way would we be able to advance collective bargaining from its present barbaric condition. I look forward to a new time when collective bargaining is carried on in the same way it is carried on in the auto industry or the steel industry or electric industry, multi-level bargaining. There should be bargaining at the national level and the schools would benefit. We would have maybe not the same amount of clout but some of the clout that the defense industry has or the cement makers or the auto makers when they go to Congress. If we were organized in a bargaining situation, it's not fantastic at all. I'm quite sure that the federal government would make education the federal enterprise in education a kind of a bureau style arrangements, perhaps like the Tennessee Valley Authority. The Post Office is a more apt illustration, bargaining could be carried on more expeditiously and when you say you can't strike the national government, well, it used to be so, but the Postal workers had a pretty successful strike and not only that, they had a strike within a strike. They had a nationwide postal strike and then there were a bunch of them in New York that didn't accept the settlement and they went on for a couple weeks after the strike, and nothing happened to any of them. They got their raise, and they got their benefits. It turned out not to be such a horrendous thing after all, the nation survived. If we can survive Watergate, we can survive anyting, but it will take the force of teacher organizations to really rationalize the state involvement in education.

I favor a certain type or method of financing education, and a governance of education, which in rough outline, you take away the power of tax from the local governments and you give it to the state and you require that a uniform tax rate be levied statewide and that assessing be audited at least from a standpoint of state level. I would settle for the average tax rate in any state, and in the State of California it would produce about one third more money than at present. The reason for that is there are many wealthy districts in California, and in Illinois, that have very low tax rates, because a low tax rate in a wealthy district can produce enough money to provide first class education. If you required them to pay their share, pay the average tax rate, the total take would be much more. I remember arguing this with Alonzo Bell, and he didn't like that at all. He's the Congressman who represents the San Fernando Valley and this money would then go into a state education fund and it would be supplemented, hopefully, from broadbased progressive taxes. Incidentally, the tax squeeze on state government has created, I think, an appalling situation. Our morality in state taxation is just gone to hell. In the 1930's we used to talk about progressive taxation and we used to be very vigorous about it and I remember as a teacher opposing a raise in state sales tax because, even though that would mean more money for education, it was a regressive tax and that would be a tax on the poor and we're against that. Well, we don't hear that anymore. New York City is going to an eight percent sales tax. Well, eight percent in New York State which used to have the most progressing system in the nation, the greatest source of income is still the income tax, but it is supplemented by a sales tax. You have off-track betting and you have the paramutual take, you've enclosed the grandstands in glass so that they can race year round and bring in more money. You can have the lottery and all the most regressive forms of taxation that you could think of and yet we don't move to a uniform statewide property tax. There's a good reason for that, those commuters don't like it. They'd rather have their folks put the two dollars on the lottery and take a shot.

Well, this then would become a state educational fund. It would be supplemented by federal aid, whatever we could dig out of the federal government, would also go into an educational fund. This would then be passed back to local school districts on a need formula. Educational need can easily be determined by the creation of a sociolegical index. It's very precise, and you can base it on the number of factors: wealth, the number of telephones in an area, the mobility of children, economic and social conditions, the involvement of children with courts, either as the wards of the court or in connection with crimes or misdemeanors. You can easily construct a social index which would provide for an equitable and just method of financing education and local school boards have really got no business in the financing of education anymore. They really ought to get the hell out of it and be concerned with the style of education, or with the quality of education they have in their districts. They should become truly boards of education and not boards of taxation. Now, if you go over to a system like that, it stands to reason that you just have to have multi-level bargaining, and most of the money would be bargained at the state level, and to the extent that we could gear up, it would be bargained at the federal level. The local level would be out of it as far as the money but it would bargain on working conditions at the local level and on other methods of teachers sharing in the governance of education right at the school and at the district level. To me that would be a rational system of running our educational system and we would then have only fifty educational systems instead of 18,000. When you consider the benefits of a thing like this, it's just too bad that people in education have so little faith, so little vision. We just need people who can put forth these ideas with more force than I'm able to do.

Now, considering the role of the state department of education in the light of what I just outlined to you, it occurred to me that one of the problems we find in federal aid is that there's nobody at the state level to give it to. There really is no legal recipient at the state level. At the local level, the school board is it. Right? They hire a superintendent making him their representative and any money that goes to them goes to their treasury. Now that could be done at the state level but most people in education would not be too keenly in favor of that process of co-mingling federal aid for educational funds with everything else. We ought to have it ear marked and segregated or sequestered within the state budget, and I think, Byron, that your chief state school officers ought to be pushing for fiscal responsibility for chief state officers and it's one of the reasons for giving the state board of education more authority. You just can't, it's just too loose now. It's just unthinkable to give it to the Governor. The chief state school officer in some states is elected and in some states he is appointed by the governor and can be removed instantly. In other states he has to be confirmed by the legislature. State departments do have as their chief responsibility the enforcement of the law and too, they see that schools operate 180 days, Thank God for that, they've got more free strikes that way, the make-up time. But at any rate, they also have problems with certification, the state departments at large have kept their noses out of this. They've always been afraid that state departments might step in to strike situations, and this is what I fear with Mike's situation, and claim that teachers have forfeited their certificates by striking and violating a law, and they have that authority to void those certificates if they wanted to. Of course, they'd have a lot of law suits on their hands, but they've got a pretty good case. Other things, of course, include the administration of the various special programs and the various other things state departments have to do, but they ought to get the thing together and assert themselves a little bit more than they have. Well, I've kind of rambled over the whole landscape here, but tried to present also a coherent plan for the future and some complaints about the present. Thank you.

LEGISLATIVE REACTIONS TO ANARCY IN TEACHER LABOR RELATIONS

Senator George Moscone, Majority Leader
California State Legislature

Well, I feel funny interposing myself at the key part of the day after two obvious experts have addressed themselves to problems, but I will talk about a peculiar set of circumstances, and that means California. I hope that those of you who have come to your senses in other states of this type will be able to understand first of all the fight that still exists in that Number One state and maybe some answers can come as to how you might improve your own process or certainly my own expertise of what not to do as the basis of that. To give you a little background of what we have in California, on the theory that you know somebody else that has a worse disease than you, you won't feel so bad about the one you have. I'll tell you why it is a difficult matter at best to rectify the situation. First of all, you've all talked about the Taylor Act today and, as usual, I gathered Mr. Taylor was not responsible for that. To give you a measure in California that is the most controversial one that I passed is called the Brown Act and I'm delighted that they never mentioned my name on it. It worked very well. We also have an act in California that, laughingly, we opposed as a collective bargaining act, some cry over it, others laugh, called the Winton Act. It's named after an erstwhile Assemblyman who is a very nice person and who, I'm sure, at the time thought he was stepping out on the limb of socialism when he proposed this measure. He no longer is an Assemblyman and not quite so incidentally, he happens to be the lobbyist for management in the education field today.

Let me tell you some of the difficult parts of the Winton Act. First of all, it provides for what I believe to be such an inherent defect that it was doomed to failure in the first instance. It is guilty of the crime of trying to be too democratic, it provides for proportionate representation at the bargaining table. That, it seems to me, is am impossible defect to deal with. You ought to have at the very least, I think, only two sides to a dispute, and when you have two, three, or four on one side of the table alone, engaged in dispute, obviously management can do nothing but laugh themselves into a tizzy because they never get to the question of the rights and responsibilities of teachers and of the school district.

Secondly, you have to understand a very peculiar aspect of the California code. I haven't done any research on this, so I don't know whether it pertains anywhere else in the country. We have what is known as a restrictive code, and that means that if the code doesn't specifically grant a right, it does by implication deny it. Everything you get in the field of education has got to be statutorily embedded in our codes or else you don't have that right. Just to point out to you how ludicrous that situation can be, in the turbulent City of Los Angeles there was, as there has been on many occasions, but not too terribly long ago, a school strike which actually resolved itself, because the parties, even though the code didn't demand it, sat down and worked out their problem to such an extent that they entered into a written agreement that was clear and concise and equitable in the relative rights and responsibilities of each side. A good faith taxpayer went into the Superior Court and had it nullified because of the fact that there was nothing in the code that said you could enter into a written agreement. The court in a rather amusing opinion agreed that was the case and tried to pry the legislature into trying to do something a little more responsive in the field. But, until last year, there had not been anything satisfactorily done on that question.

Then last year an unusual occurrence came about. That was when the California Teachers Association and the California Federation of Teachers and others all decided that they would agree down to the comma on a single collective bargaining bill for teachers, and that was the bill they asked me to carry through the legislature. I did so, gladly, and I expect that the reason we made some history by finally passing a collective bargaining bill covering teachers, was simply because of the coalition that worked together, rather than at each others' throats; so that it was not a series of wasted motions and controversial confrontations. The only point of stress was whose bill was it. Was it the C.T.A.'s bill or the C.F.T.'s? When I spoke before the C.T.A. I applauded them for leading the fight and before the Federation I applauded them for leading the fight and it was understood by all it was nice politics. The bill was an excellent one on many counts and I'd like to go through them with you if I can and try to give you some political reasons for them.

You might be surprised to know that the bill did not provide for the right to strike because the advocates, C.T.A. and C.F.T., felt otherwise as a matter of philosophy. The bill was silent on the matter and I think it's fair to say that the teacher organizations in California are pretty mature, they understand that giving the right to strike or not giving the right to strike is really somewhat irrelevant, certainly irrelevant in my native city of San Francisco. When they cannot give a reasonable redress of their grievance, they go out and strike, that is apparently true in the somewhat conservative community of Torrance which just yesterday, I understand, went out on strike, and also in Fresno, which just last night brought it up for a strike sanction and that of course would be a strike for it. There's never been a strike in the San Joaquin Valley, that's the valley where Cesar Chavez gets his head knocked in rather continuously and so you understand that their politics is not really that of the liberal stripe. So, as a consequence, we didn't really dwell much on the question of whether you had a right to strike, we took the position that if you give us a decent bargaining process, the times when a strike might come about are so few in number that we will have solved the problem without the confrontation. By no means did we agree to some of the efforts on the part of the conservatives in that legislature to insert a prohibition against the right to strike. We refused that quite vigorously and as a consequence the bill went to Governor Ronald Reagan's desk without any mention of the right to strike. Now, there's a legal confusion of that question in California as to whether there is or is not a right to strike. There are those who say that there being no specific prohibition that it is therefore illegal. There are those that read the case as to say that it is not illegal per se but if indeed an injunction is granted against the strike and of course the injunction is breeched, there is a prohibition by its very nature of contempt action.

Whatever it is, it doesn't seem to have stopped teachers who are frustrated from hitting the bricks, as it were, and so the old argument that people stood behind that we ought not to pass collective bargaining bills because that means the right to strike has really not been anything more than a lot of rhetoric. It has had less and less impression on the legislature, though it still obtains with the Governor's Office. For those of you who don't know this yet, let me tell you that Ronald Reagan is a lame duck and he will not be seeking re-election this term. It would seem to me that, except in very unusual terms or circumstances, the next Governor of the State of California, will be a friend of education that will be much more realistic in the area of collective bargaining. So I think what I say to you has a reasonable chance of becoming law, at least in the State of California.

Now what we did in Senate Bill 400, the collective bargaining bill, is to provide that we would have instead of proportional representation, exclusive representation and that, of course, was an exclusive achievement on the part of the two contending factions. As you know, the federation, even though smaller in number, had felt its muscles. Many thought it could win the election process more often than it lost. So they put the challenge to the California Teacher Association and that challenge was taken up last year when the C.T.A. said, "Well, we'll take our chances, too, we'll both go out on a great recruiting drive and we'll do battle with you and we'll be willing to settle with the results of our elections." The elections process would provide for the retention of the losing representative body for at least a period of two years to give some kind of continuity and, hopefully, some harmony in the school districts.

Secondly, we provided that if there were to be some kind of an impasse we would first step in with mediation and mediation hopefully was done with the idea that just what it pretends; that people would be able to get off their high horse and sit down and talk in a calm atmosphere and be able to proceed to eventual agreement. Thirdly, failing in mediation, there would be fact finding. Fact finding was to be done by a reasonably democratic process of determining who the fact finder would be for a period of time. Whatever facts were found were to be kept private for a period of time so that nobody would be compelled to throw that out to the public sector and embarrass one side or the other into accepting or rejecting a measure. Then after that period of time, if there was no response to the facts as found, then of course it would be made public with the idea that the public will demand the right to know just what is going on at the bargaining table.

We provided that there was to be arbitration, but the arbitration was to take place only after the parties had come to an agreement. This was misconstrued, I think purposefully, by many of the opponents of the legislation, who tried to take the position that you can not take away from an elected official and a school board member his constitutional duty and right to vote which, without quarreling with the law on that question, whether it's right or wrong, we did not intend or attempt to do. But we said that if the parties came to an agreement, it would be binding and if there subsequently was any dispute under that agreement what was meant by this or that; if there proved to be any ambiguity on either part and each party claimed that it was not breached, then of course, there was a policy commission set up in the other bill that had the ultimate responsibility of arbitrating that question.

Lastly and I think this was terribly important, we got rid of some of the sham that had taken place for so long. If you think California is peculiar in its politics, let me tell you that even under the Winton Act, people were fearful of using the word "negotiate" because that conjured up all kinds of terrible things, the first speaker here today mentioned something about washing your mouth out with soap and everybody laughed as if it were nostalgic. It's not so nostalgic in California, so they use the terms "meet and confer", and we went into Executive Session and to see if we should even go so far as to say "in good faith" and things of that nature. So on this one we let it all hang out and we used the devastating word of "negotiate" and we really thought we had gone somewhere. Now, this was one of the more classic battles in the California State Legislature and I would commend both teacher associations for having done such a journeyman job in educating the members of the legislature. I don't think it was a wasted effort even though eventually the Governor vetoed it among a blast of rhetoric, because indeed we did educate a great majority of the 120 legislators in both houses of the California legislature who quite remarkably are extremely talented, but don't seem to know a blessed thing about the complex intricacies of negotiations and the settlement of labor disputes. Somehow or other they think that just means sitting down at a table and whoever has the greatest political muscle wins the fight and while that's often more true than you like to believe, the fact is in order to "do it in good faith" you've got to know precisely what you're doing and they learned a great deal as they heard experts from the educational establishment explain it to them.

As a consequence, the bill did not sneak out, it got out handily in both houses of the legislature and while I think we may have had close to 100% support by our Democratic members of the legislature, we had a rather high percentage of experts, many of whom had given long and tedious speeches against the evils of the collective bargaining in the past and who ought to be given some credit for the fact that they now admitted that there were many things that they did not know about it. That was hastened, I think, by the fact that both the federation and teachers associations in California have now gotten some of the political muscle of which you speak. Thus, a combination of good sense and good sound politics made it possible to put the bill on the Governor's desk.

We had another piece of legislation that really hasn't fared as well. It's obviously, as I hear from Dave's speech, something he would have preferred and I can understand that. It dealt with the rights of all public employees, indeed talked directly about the right to strike, and provided a mechanism that would be taken by all parties should the strike come about and I think the option to go my way or the way that they asked me to go was resolved by simply looking at the realities of life and knowing that we would not even get that one through the legislative process. Incidentally that bill has been shepherded by the Speaker of the Assembly, an enormously talented and powerful young man who is the leading candidate for Governor right now. I mention that because obviously if he wins the nomination and then the Governorship you can get a pretty good idea of what he believes are the rights of public employees, including but not limited to teachers. So that was the case in that particular situation.

Let me try to go through the opposition; the things that were talked about, first of all there was the old cry of school board emasculation. One can understand that. I'm sure one of the answers to the question of why merger is difficult in the N.E.A. and A.F.T. is because that necessarily means that there are going to be fewer officers, fewer officials and admirals and captains than those that have already gotten their stripes, are rather unwilling to give them up. It's the rather classic battle in re-apportionment and state legislators and just politics in general. Watergate, etc., you do anything so you can get elected and, of course, if anybody takes it away from you, that's worse than never having gotten elected at all, because you've still got some of the whipped cream on your lips and it's very hard to forget the taste. As a consequence these sturdy people who campaign vigorously for election to the several school boards in California, after having won the honorable accolades, certainly wouldn't want to surrender it, even if in fact, there was no surrendering of anything other than the problems that are existent under the present state of affairs. I'll have you know if there is anything in my view that has got to be done in order to bring some sanity, at least to the California process, it is to take away from elected officials at the school level the responsibility to deal fiscally with the problem. Everybody that I know in California has been elected to the school board, because, rightly or wrongly, a majority of the people in the school district have believed that they won't spend five cents of the taxpayers' money and therefore they can be perfectly assured that the school districts won't perform their job. It seems to me that if you can take away that campaign issue as well as that responsibility of a school board issue, we might eventually get to the question of how we provide a good school environment both with respect to teachers, administration and the ever present student about which everybody seems to be so terribly concerned, at least in rhetoric. So the emasculation or fear thereof, is probably the greatest opposition to a collective bargaining bill. To such an extent I must say that if there was any part of me that did not yet feel that rage, it didn't escape this one. Actual lies were told by people who know better, people who are part of the alphabet and who represent the school boards, who actually went to editorial writers in our state and actually hoodwinked them into believing that my bill said something other than what it did in an effort to stampede the public and all into believing that we were trying to take away from those students and taxpayers and school board members for every conceivable prerogative. I can understand debate and a little bit of pumping up of your position, that's called I believe vendor's puffing, but outright fraud and deceit is totally unacceptable and it just tells me once again that if the lie is big enough you can fool the most sophisticated of people and that's apparently what they did with the exception of the legislature that saw the legislation and was not going to be fooled with the rhetoric. I suspect the Governor even if he didn't read the bill, his people who advise him advised him correctly that the bill didn't do what most of the editorials said it did and that it is really a pretty good piece of legislation but it was a tremendously difficult thing to do for him politically in view of the fact that he has admitted on more than a few occasions, and of course his constituency is that which very much is opposed to the advancement of the rights of teachers. Although they do say, as Dave points out, so very much in a contradictory fashion, "why don't you do something for the kids" and then immediately rally all of the support they can against any and all forms of legislation they do precisely that, so it's rather an interesting but devastating contradition. Anyway, I think the Governor came very close. I'm the most vetoed legislator in the State of California, a questionable accolade, I guess, the fact is, however, he usually tells the press that he's going to veto my bill when it's introduced. In this case he let it not only get to him on his desk, but he went to twenty minutes before the law that made it the law of the state by implication had he not done it, so I suppose we impressed a part of a very dedicated person on the other side of the question. I'm sure that there were political consequences attached to that but whatever it was, I think that's worthy of some note. Let me tell you why it was successful. It was successful not because I'm the Majority Leader, though I'd like to think otherwise, I don't enjoy that measure of power. I'd like to think that it was because I'm a terribly enlightened legislator, that's not 100% true either and the fact is it was because of the concerted effort of the teaching establishment in that state and really not for political reasons, frankly, because they're not that strong themselves, yet. It was because they did an excellent job of edifying people who had been on the other side of the question by and large.

Now, I'll tell you where we made a serious mistake and I have found this out and I should have known this long ago. It gets back to the Pavlovian response of many people, certain words conjure up certain visions, I'm sure you know that if you're in a legislative branch, I don't care how low, how high, if you attach to your legislation the word "reform" it usually has about a twenty-five per cent constituency even before you let anybody know what it is. On the other side of the question, "collective bargaining" being such a bad term, I should have just called it an amendment of the Winton Act, which indeed it was. I suppose that if I'd done that then I wouldn't have had to make so many legislators, and eventually the Governor, have to lose face. Everybody learns, certainly I do, and if I proceed in the future as certainly I intend to do, it will be on the base that we're not talking about collective bargaining we're talking about amending the Winton Act and everybody will say "oh, I see". . .There is another fact and, of course, this is intertwined in what I say to you and that is the absolute essential need for sound public relations. I mean the very fact that we're here today and I presume that all of you here qualify as an expert of one form or another, you're learning more and more about the subject about which you think you're expert. What do you think that a trainer in Solano knows about collective bargaining? What do you think a housewife in the Sunset district in San Francisco knows about collective bargaining? What do you think that any of them know, particularly when they are bombarded with the statements that we referred to. "Why don't they do something good for the kids?" Isn't it outrageous where most of the budget goes - 85 per cent of it goes to the salaries of teachers and so that has got to be combatted. You've got to sit down and work out ways in which it can be made clear to the electorate and we're certainly not ashamed of what we're trying to do and that's making some sense out of a system that cries out for harmony rather than the kind of chaos that has been a by-word in California. This is a serious process and I think it means that that's the principal purpose of a teacher organization these days, mainly to communicate accurately and in a satisfactory fashion to the public what exactly is the goal to be achieved by teachers in this quest and that will be more than a significant contribution.

I suppose even though I see I'm recorded I would be remiss also if I didn't point out another reality of life and that is contrary to the cry at least obtained a few years ago. It is not only not wrong to become involved politically if you also happen to be an educator, on the contrary, it's indeed imperative that you do and if you ever doubted it then take a look around you and see how public officials respond. They don't respond to the silence of a good faith proposition, I'm sorry to say, sometimes because they don't notice it, other times because they don't have the political luxury of being able to do that with so many other attendant demands being made upon them by a great majority of the people of that governing district. So there's got to be political involvement by people in education. Hopefully involvement on a responsible basis and not a threatening basis, I quite agree that there's always an evil inherent in political pressure, in the form of money or otherwise, and that's probably why the strike is the better of the four so-called remedies. We're getting relief, but the fact is you're not even going to get to that position unless you have deep, political involvement, I know I'm not asked to give recommendations today, but I have to do that, I think that's critically important.

Dave Campbell is here from California, the only other Californian here, who is a representative of a very progressive minded Superintendent of Public Instruction, Wilson Riles, who it was said could never be elected because he was black, and now he is running, the conversation over here is will he get seventy per cent or eighty per cent of the total vote as he stands for reelection. That didn't happen because of the nobility of spirit of twenty-one million Californians. It happened because educators who were fed up with Max Rafferty would not let it be any longer. That's exactly why - had there been no contest, had there been no great campaign, Max Rafferty would not be in Alabama, he would still be ours and God knows what that would have meant. But the point is, I don't think you can shy away from anything, obviously from what I've heard today. Neither one of you is very shy about talking about the hard facts of life, and I'm just joining with you in saying that even though obviously there are differences of opinion in your two previous speakers, there's also a great deal of concensus on several questions and further, it puts us in the arena of debate, rather than just recrimination which is the state from which I come. I'd like to do better, I'd like to take it out of politics in the sense that we could deal with questions of education responsibly, but I must say that we're never going to get to that point until from some political point of view, we put the right kind of ideas in the minds of elected school officials.

The last thing I will say is that I don't think we are that peculiar. I think it is true that even in those states represented by you here today that enjoy some form of collective bargaining from what I can see need a great deal of improvement most of all in the categories I mentioned, public relations, and the like, and I would like to think that this is sort of a national effort and unless California gets off the ground to join with you and Illinois as well then we're simply not going to be able to solve any kinds of problems at any level, local, state or national. Thank you very much.

PANEL DISCUSSION--STATE AGENCY REPRESENTATIVES

Participants:

Vito Bianco, Associate Superintendent, Office of the Superintendent of Public Instruction of Illinois
Archie Buchmiller, Assistant Superintendent, Office of the Superintendent of Public Instruction of Wisconsin
Robert Helsby, Chairman, New York Public Employment Relations Board

Vito Bianco:

I talked to Superintendent Bakalis again this morning and he expresses his regrets in not being able to at least be in attendance to officially welcome you to Illinois and to this conference and so I suppose for the second time I would like to officially welcome you to our state, which is similar to many other industrial states with some mixed agriculture. I will try to outline some of the things and some of the problems that we have had in our state which has no collective bargaining law for public employees. I hope this does not turn into a bring and brag discussion or this is the way we do it kind of thing so you can all go home and all practice on whoever you need to practice on. Hopefully, we'll try to explore today some of the aspects of the activities of a state department of education faced with a situation it believes it can do something about. Illinois, as we have said time and time again, does not have a law and I think it's rather interesting, I think, perhaps to trace some of the history as to why Illinois does not have such a law.

Most of the industrial states, those states which have a strong labor movement industry, and I can assure you that Illinois does have a very powerful, very influential labor movement in the political arena. However, the problem has basically been that labor has not been able to put it together. For a variety of reasons, organized labor has in most cases been an impediment to any kind of statutory regulation over collective bargaining in the State of Illinois, and so we are faced with a situation where a great deal of case law has governed the conduct of the public employee collective bargaining in our state. The history of the state's role in collective bargaining in education really I suppose goes back to the previous Superintendent of Public Instruction, Ray Page. His term ended in 1971 with the election of the present Superintendent, Michael J. Bakalis, and Michael Bakalis' official elected term of office will end in January of 1975. Mr. Page was involved in several arenas around the state and probably the most notable was in East St. Louis. In the city of East St. Louis, the East St. Louis Federation of Teachers had an extremely powerful local organization. That local organization had a contract that in my opinion nearly crippled the Board of Education. The Board of Education in fact had to go to the teacher union before they even adopted certain budgetary policies. This kind of a strangle hold on the Board of Education and the union's demands eventually led to a very long and bitter strike in East St. Louis. The Superintendent of Public Instruction was called upon to try to get the troops together and to try to work out a solution and of course that attempt failed and consequently the strike lasted for ninety days and eventually a **settlement** was reached whereby all of the teachers, the Board of Education simply declared, were unemployed. They did hire them back eventually, but stripped them of their tenure.

Well, after that attempt we had several strikes in the City of Chicago and several disputes in the City of Chicago, all of which never got the attention of the State Department of Education. The reason for that was the City of Chicago has perhaps one of the greatest mediators in the country in the form of Mayor Daley, and when the Chicago Teacher Union and the Chicago Board of Education, which the Mayor appoints, get into a situation where they could not resolve their impasse, mediation in the Mayor's office eventually led to solutions ever since 1965. I suppose to get down to really what we have done or tried to do, when we came into office, when Dr. Bakalis was first elected, he had said in his pre-election announcement that he felt that teachers had a right to bargain with the boards of education and he was disturbed about the fact that there were work stoppages and that there were problems and he would attempt to do something about it. Well, when he took office in 1971, he said, "Okay now I've said all these things, Bianco, now I want to have you put something together so that we can address the problems in this area." So we put together a unit that was called the Teacher-School Board Relations Unit and let it be known to all the educators in the State of Illinois that we were going to make some attempts to interject ourselves as a third party in the teacher-school board relations business and in the collective bargaining business. That very first year we were involved in approximately thirty situations and we set up a series of guidelines that put us definitely in as third party people, people interested in mediation basically, or any other kind of services that our office might provide in the way of financial management, budget analysis, etc. We went on with that role and we are continuing in that particular role at the present time. The interesting thing about it is that originally the teacher organizations are extremely interested in having our intercession. They were interested, perhaps, because they had never had these kinds of services before available to them, there was no statute that required it and if they could ever get the board to agree to some intervention from the State Superintendent of Public Instruction, I think that they felt that they would have some advantage. Boards of education on the other hand viewed us as meddling, as people who were interested in furthering the cause of collective bargaining, which in many cases, boards of education felt was not a good practice and that collective bargaining really was a one way flow of power from boards of education to teacher organizations, and of course they resisted in many cases or attempts. However, we found that when we got to a situation where there was a strike in fact in progress and the impasse was real and the community pressure began to mount, we found that in many cases we were welcomed into those situations. Over these past three and a half years, we have been involved in well over eighty-five situations as either mediators, advisors, or other third party kinds of services that might be available.

I suppose I should comment now about the wisdom of our intervention and the wisdom of those particular policies, and what does the future hold? I think that I could say frankly that this service filled a very important gap in a very important vacuum. However, I do not feel, as bargaining becomes more sophisticated in Illinois as it is in other states, that the State Department of Education really has any business in that kind of role. I do not believe that the State Department of Education in fact can act as a mediator. I don't think they can do that because of the fact that they are clearly identified with management and if you try to do that and your concern is with the efficient operation of public schools, then any attempt to come in as a so-called neutral third party will be viewed as serving your clients and those clients basically are Boards of education and school administrators. I think it can also be viewed as a pro-teacher kind of an activity and consequently some creditability when you work in other areas is lost, and so I think while those policies have been useful in the past during this administration, I believe that it is time for the State Superintendent of Public Instruction here in the State of Illinois to extricate himself from that particular role and instead adopt a different role and that role being one who serves the public schools and their elected officials.

In order to do that, the State Department of Education in this state has proposed a collective bargaining law. It was modeled after the Pennsylvania law and the Hawaii law. It is the only law that has overwhelmingly passed the Illinois House of Representatives and was narrowly defeated by four votes in the Illinois State Senate. There are still some problems with that. Now, as you are probably well aware, any law will have to address itself to three issues that I'd like to call the three S's. Number one is the scope of bargaining. Number two, the most controversial issue, the strike; and the third one that seems to be gaining some popularity in fact and that is the very security for teachers organizations. On the issue of scope, I'm not sure that the collective bargaining law ought to even define that. I think that one of the biggest problems that we've had with the whole issue of scope is that Boards of Education somehow feel that, if in a law, teachers are only limited to certain working conditions and bargaining, that everything is going to be a whole lot better. My suggestion to people who are concerned in the area of scope is that it ought to be a subject for bargaining itself and that a board simply has to say no to certain things that it feels are its prerogatives and I know that that's easier to say than it is to accomplish.

The second one is the issue of strikes. For many, many years the education association in particular used to talk about work stoppages and sanctions and all those other niceties and never really got into the issue and that is to strike, and it was such an emotional issue, and one of the ways that some collective bargaining laws were sold to legislatures was the fact that it was going to somehow magically stop strikes from occurring. If you look at this particular publication from New York, you can see that there does not seem to be a great deal of correlation as to whether or not you have a no-strike law, or if there are extreme penalties against organizations and individuals for striking. We have no law in Illinois and yet our courts have said that our public employees may not strike. It is illegal for them to strike, yet you can see that Illinois ranks high in the number of teacher strikes as well as the number of man days lost. So that issue is one that I think we need to address ourselves to, but basically it is our position that strikes by public employees and classroom teachers ought to be allowed and there seems to be little that we can do about it. One of the saddest situations, though, that I have seen, is the fact that many teachers and many other public employees have gone to jail exercising what they feel is their constitutional right to withhold their services. The other emotional issue in Illinois is the fact that the bill that we have proposed does permit agency shop and this of course goes against the grain of the people and causes a great deal of emotion to be generated on this particular issue. As I said, I feel that the role of the S.E.A. is one that has been involved basically as a middle man with management getting boards of education, or whomever negotiates for boards of education, up to a level of proficiency so they are not at a distinct disadvantage at the bargaining table.

I think that a law in Illinois is necessary for all and one of the questions that we need to address ourselves to and think about is "What educational benefits are going to come from a law? The answer to that is very simple, there are none. There are very few educational benefits that I can think of that will come from any kind of collective bargaining law, nor have I seen basically any great educational benefits that have come out of the process of collective bargaining. I suppose you could say, "Well, if we have a law and we have constraints then perhaps some of the strife may be diminished." But basically, in terms of any kind of educational policy, I do not feel that there will be a great deal that will meet the dilemma when a law comes in and everyone is bargaining collectively. There are some other choices I suppose and my colleagues on the panel will illustrate them, but let me leave you with the dilemma you are faced with when you think about the choices.

Archie Buchmiller:

I am awed by all the labor relations experts present at this conference. A grass roots layman like myself really has little business being among all the power that is assembled here today. Thus, I will stay within my limitations and only personalize some things about SEA labor relations roles that have resulted from my own experience, often, I might add, things in which I had very little choice. I think I came here more to cry and sob, so if it sounds that way, you'll have to forgive me for not bringing the "bring and brag" bag.

The primary question for this conference is: What should a state education agency do in the area of labor relations? I happen to come from a state where the education agency has no legally defined role in the field of labor relations and in teacher negotiations between employer and employee groups but which has a strong public employee bargaining law. I have been employed at the state department since 1963 when Wisconsin had the nice old "meet and confer" statute. Being naive, innocent, and fresh from the field as a local school superintendent, I was easily persuaded by the secretary of the state school board association into going around the state with him making speeches something like, "Watch Out, The Teachers Are Coming!" I suspect history has proved that admonition to be correct. The "meet and confer" statute has since disappeared in favor of a stronger collective bargaining law for public employees.

About the same time the new law was enacted, the state superintendent tempted me into accepting the position of deputy state superintendent. Before wisdom overtook me, I said "Yes" and thus became the implementor of the state superintendent's policies and issues and problem solver in many areas. While the state superintendent in Wisconsin is elected for a four-year term through non-partisan ballot, that didn't stop politics from impacting upon the agency's labor relations involvement from time to time. The prior state superintendent held that the state education agency had absolutely no business in the local school district labor relations field as far as school boards and their employee groups were concerned.

This philosophy was comforting to me, and you can imagine how surprised I was one afternoon when the state superintendent bundled me on an airplane to Superior, Wisconsin, and said, "The collective bargaining process has broken down, and I offered your services to help out at Superior." I was on the way to settle a strike of teachers and had an hour to educate myself in what a state education agency should do when it is involved in a local strike situation.

My game plan included the strategy that I should talk on neutral ground in respect to both parties, and I gathered the parties together in a friendly atmosphere, including refreshments. The discussions proved fruitful, and shortly, the strike was settled. I thought that was an excellent strategy until my boss disagreed with some of my logistics. However, I have clung to the notion that sometimes the ends justify the means.

About a year later, I found myself on the way to Wisconsin Rapids under similar circumstances, admonished by the state superintendent that the district was running out of school days in order to qualify for state aid. Several days later, 18 issues had been resolved and the last three ready to go as a package settlement. Wisconsin Rapids resumed sessions and qualified for their 180 days to get full state aid.

On another occasion, under persuasive political proddings, I found myself on the way to Wausau, Wisconsin. Upon arrival, the school board's negotiator began to discuss my lineage, my apparent age, and what kind of person I would likely be for arriving under the circumstances. It became clear that my involvement was not desired--"We really don't know why you're here." They indicated there was nothing I could do, and I said, "Fine, tomorrow morning after a good night's sleep, we'll go back to Madison. In the meantime, if nothing changes before I go, I suppose I'd better have a little press conference for the press and radio." By the next afternoon, we were secluded in a hotel room with the chairman of the Wisconsin Employment Relations Commission bringing the parties together and within two days reached a settlement. This may give you an idea of how a state agency can get involved when it has no legal role and is involved with little choice in the matter.

With this qualifying introduction, I need to emphasize that what I say today are my personal impressions and convictions. They do not necessarily represent the policies of the Wisconsin Department of Public Instruction, either past or present. Now, to the question at hand as to the kinds of roles that I believe the state education agency can play in collective bargaining at the local school district.

A night or two ago, I dictated some 77 letters for the state superintendent in response to constituents' requests for information about a strike in a little place called Hortonville and the department's role in the matter. As a result, my conviction that the state education agency cannot escape being involved in the process of employee/employer relations was reinforced, especially when it begins to come to impasse or strike. When the traffic gets hot, somebody is going to have to be involved.

What kinds of ways can the state agency be involved? One of the conditions we established was: Never go in on a local situation unless the teachers, the school board, and the Wisconsin Employment Relations Commission ask for us to become involved. I believe this was pretty good strategy since we didn't have an official role, and in all cases almost every time I went in, I had commitments for help from the Wisconsin Education Association, the state school board association, and advice from the Wisconsin Employment Relations Commission. Under those circumstances, I certainly went in with a greater advantage than other persons might have had.

The first advantage I had in the SEA mediation efforts was the ability to play a unique role. It was not arbitration, mediation, or fact finding. Rather, it was a kind of combination mediation and arbitration role combined with vested constitutional power. For example, in Superior, when an issue separating the parties rested on a legal question, it was possible for me as a state official to call the Attorney General in Madison and get an answer to the question That made the answers of the school board's attorney and the other attorneys irrelevant as to what the law was in this case, and it broke open blockages to get things started. I was able to determine, for example, what was a certifiable day to qualify for state aids because I had the power to make such an interpretation. Decisions were made which helped resolve the differences that separated the parties. This unconventional role was pretty important. It's a unique role, and one that can't be used unless you have the consent and confidence of the head of the agency with assurances that he will stand behind you. I suspect that when one goes into such a situation, one has to believe that rules are made to be broken a little but remain within legal restraints.

The second role the state education agency can play is the very, very important role of providing information about the alternatives that are available to the parties and their consequences in relation to subsequent actions at the state level. For example, the receipt of state aid is pretty important for the teacher, the school board, and the taxpayers. The information brokering role can be effective, and I was on the telephone constantly in the cases cited as my successors have been since that time. If one is able to clarify problems or issues before they become public confrontations, you're a lot better off than if they must be resolved in full public view. Once people's egos and their opinions about what ought and ought not to be are made public, they're much harder to settle. In certain areas, we were able to clarify issues, alternatives, and consequences before the situation became too critical. Only in one case, in Racine, did this blow up on us a bit. In that case, the parties demanded a written interpretation which we provided and which, incidentally, lost considerable support to the state superintendent afterwards. Those are the kinds of roles I played and which I think worked effectively in the circumstances in which they were used.

The third role that I believe is important is to facilitate communications between parties. If open communication is not achieved between the two sides during times when issues cannot be resolved, then frequently someone will be looking for a biased interpretation to unhook themselves from an indefensible position. Often, a third party can facilitate communication over the telephone away from the scene of the action to disengage the parties from their deadlocks and permit them to transfer their resentment to a third party. From personal experience, I have to admit that kind of thing is hard on third parties!

The fourth thing the state education agency can do or may get involved with in playing an effective role is something that may be called "jaw boning." I believe responsible jaw boning can be helpful, but there are few rules as to what this is. There can be pronouncements in public by the state official which may affect the course of events and bring about reconciliation. Whether it's good or not, I'm merely saying it is a role I've experienced, and it is one in which you can inject a new element into the situation to bring parties back together.

The fifth and last role I believe the state education agency can play in labor relations conflicts stems from a citizen expectation that a state department of public instruction does in fact represent and protect the public educational interest to the best of its ability--protecting the public interest to see that there are licensed teachers in classrooms, that there is normalcy in instructional procedures, and that health and safety of children, employees, and the public are assured. For example, to tolerate or approve combined classes of emotionally disturbed and mentally retarded students which result in physical injuries is not an accommodation to their general welfare. Even local officials who go on television and say things are normal do not convince anyone that things are in fact normal. I think the public looks to the state agency to protect children when necessary. There is a need to assure and protect the educational benefits under compulsory attendance laws to children in the schools.

These are some of my feelings about the state's role from my own past involvement and observations. I doubt whether statutory authority is needed to assume them on the part of the state superintendent or state departments of public instruction.

PANEL DISCUSSION--STATE AGENCY REPRESENTATIVES

Participants:

Vito Bianco, Associate Superintendent, Office of the Superintendent of Public Instruction of Illinois
Archie Buchmiller, Assistant Superintendent, Office of the Superintendent of Public Instruction of Wisconsin
Robert Helsby, Chairman, New York Public Employment Relations Board

Robert D. Helsby:

First let me spend just a couple of minutes on a background of what has happened to bring us to our present stage of development. A basic principle of our democratic government is that we want to be involved in the vital decisions which effect our lives. This principle goes back to the very foundations of our country--to taxation--without representation, to the Boston Tea Party, and other such actions which indeed demonstrated that this principle was the underlying reason for the American Revolution.

With the advent of the Industrial Revolution, most employers decided unilaterally on the conditions of employment for their employees; any employee not finding these terms and conditions satisfactory was invited to go elsewhere for a job. Over the next hundred years, employees in business and industry were increasingly dissatisfied with that form of decision-making and they began to form guilds, unions and associations of all kinds to band together to bring collective pressures and develop a system of bilateral decision-making regarding conditions of employment. This system became known as collective bargaining.

In 1935, the so-called Magna Carta of labor was announced--the National Labor Relations Act, more commonly called the Wagner Act. This law established collective bargaining as the official system whereby bilateral decisions would be made on employee conditions of employment.

The Wagner Act excluded three major categories of employees agricultural and food processing workers, employees of non-profit institutions such as hospitals, and public employees.

With respect to public employees, in 1935 it made little difference whether you were liberal or conservative, Republican or Democrat, Franklin Delano Roosevelt or Calvin Coolidge--the position was essentially the same; collective bargaining had no place in the public sector. Since the right to strike was regarded as an essential part of the collective bargaining process and strikes against the government were regarded as anarchy, the whole system was regarded as a threat to the sovereignty of government.

This position persisted until after World War II when public employees began to strike because they were dissatisfied with their conditions of employment. In my own State of New York, the Buffalo teachers walked out in such a dispute in 1946. The reaction of the New York Legislature was typical of many other governmental bodies. It passed a punitive law called the Condon-Wadlin Law which was not a labor relations law. It simply restated the flat prohibition on strikes and subjected any striker to immediate discharge and many other types of penalties. Such legislation did not solve the problem. Over the next 20 years, public employees struck with increasing frequency and often with impunity. As striking employees would walk off the job, they invariably said to their employers something like this, "Let's be sure we understand each other - we don't come back to work until you waive the penalties of the Condon-Wadlin Law." And if the employer said that he had no choice under the Law but to impose the penalties, the employees simply said "Then we won't come back to work." This situation occurred dramatically in January of 1966 when the subway workers in New York City went on strike. When Mayor John Lindsay told the subway workers that he could not waive the penalties of Condon-Wadlin, the workers did not return, and the New York State Legislature ended up giving immunity to the subway workers from the penalties of their own law in order to get them back to the job.

It was at this point Governor Rockefeller said that the whole labor relations system for public employees should be studied and re-examined. He appointed the Taylor Commission headed by Professor George Taylor of the Wharton School of Business in Pennsylvania. The report of this distinguished committee was submitted to the Legislature in the Spring of 1966 and one year later it was enacted into law - our New York State Taylor Law. The Taylor Law is a complete labor relations statute which attempts to strike a balance between the rights and interests of public employees in determining their conditions of employment, the rights of governments to govern, and the rights of the public who utilize the services and pay the bill. It emphasizes an orderly and systematic resolution of disputes rather than a reliance on strikes.

I suspect that almost every speaker on any subject in the last 10 or 15 years has spoken on the dramatic changes taking place in our society. This field of public sector labor relations is a graphic example of the magnitude and rapidity of these changes. Where a generation ago the largely accepted posture was that collective bargaining had no place in the public sector, Section 200 of the Taylor Law says this:

> The legislature of the state of New York declares that it is the public policy of the state and the purpose of this act to promote harmonious and cooperative relationships between government and its employees... These policies are best effectuated by granting to public employees the right of organization and representation, and requiring the state, local governments and other political subdivisions to negotiate with, and enter into written agreements with employee organizations representing public employees.

This represents a 180° about-face public policy. Thirty-seven states have now passed some kind of labor relations legislation for public employees. Regarding federal employees, you are well aware of the ramifications and impact of the federal executive orders and the move which is now underway for federal legislation.

The public sector for a number of years has been the frontier for much, if not most, of the new labor relations developments in the nation as this one-sixth of the labor force seeks to retain a similar voice in the determination of their wages and other conditions of employment that their private sector counterparts have obtained over the past 40 years. Thus, for more than a decade, the fastest growing segment of organized labor has been among the unions representing public employees.

In almost all sectors of public employment, the employer can no longer unilaterally establish the terms and conditions of employment. As previously indicated, thirty-seven states have passed legislation granting organizing and bargaining rights to at least some, if not all, state and local employees. At the federal level, postal employees have achieved essentially the same rights as state and municipal employees. Wages and salaries for classified federal employees and blue collar employees of the Defense Department are basically determined by various types of wage surveys - ascertained through relevant movement in the private sector rather than by unilateral action of the employer. Federal employees covered by Executive Order 11491 may also negotiate with respect to conditions of employment other than wage and salaries - apparently about half of them do so.

In short, while there are some significant omissions, most major public employers across the nation no longer unilaterally determine wages and working conditions. The imprint of these developments over the past ten years or so on public management have been substantial. Such developments include:

1. The political muscle of organized public employees is on the increase, and we are probably just on the verge of being able to grasp a few of the implications of this development.

2. Legislation and executive orders (as at the federal level or in Illinois) surrounding the representation and bargaining process with a series of protected rights which, although applicable to both sides of the table for the most part, serve primarily as restrictions on management, particularly in the development phase of the process.

3. Overtime, a basic change in internal arrangements and attitudes on the part of public management is being required.

The growing power of public employee unions both within organized labor and as an increasingly powerful legislative force is a development of which we are well aware. In the context of our discourse here, it is not a matter of central concern except insofar as it can have a substantial impact upon the role of the public manager. A basic illustration is that sometimes public employees can obtain from a city council, a town board, or a state legislature what they can not get at the bargaining table. In the not too distant past, it was customary for Governors of New York to make an appearance at the annual convention of the principal employee organization representing state employees and either take credit for the last pay increase or announce what the next one would be. This practice has been defunct since the advent of bargaining. Even politicians have learned to respect the integrity of the bargaining process. It is not, however, the politician who faces the most painful adjustment. Rather, it is the middle level bureaucrat who must, perhaps, make the most critical adjustments.

This adjustment begins with the discovery that the basic relationship has become adversary, whatever it may have been before. Initially, for example, there is the unit question. To a certain extent, at least, unions seek bargaining units in which they can win elections. Strength of organization may not be a statutory virtue anywhere, but it is certainly a practical consideration. From a management point of view, the prevention of excess fragmentation is usually considered to be a virtue. This stems from considerations such as the number of negotiations that must be engaged in or whether salary negotiations can be confined to across the board increases or must get into individual job classifications.

Under normal circumstances, such decisions will be made by a neutral agency rather than by the employer if the parties cannot mutually agree or if there are unions contesting to represent the same employees - agencies such as the National Labor Relations Board for the private sector, a state agency such as the New York State Public Employment Relations Board for state and municipal employees, or the Assistant Secretary of Labor for classified federal employees. The criteria utilized will vary from statute to statute and from agency to agency. Those found in the Taylor Law are not unique to the public sector:

1. Community of interest;

2. Officials at the level of the unit share authority to agree to make effective recommendations with respect to terms and conditions of employment;

3. Compatability with the joint responsibility of the parties to serve the public.

Under these criteria, the New York PERB has attempted to prevent excessive fragmentation by establishing the broadest possible units. This approach is in marked contrast to that of New York City in the early days or even under the initial Executive Order. In New York City since 1968 there has been a systematic attempt to reduce the number of bargaining units and the number has decreased from about 400 to about 200. In contrast, New York State with about 2/3 the number of employees has eight units.

Once the unit question has been resolved, public managers find a new set of rules again apply if there is a contest to determine the bargaining agent. This choice is up to the employees in the bargaining unit. While policies and rules vary somewhat from jurisdiction to jurisdiction, the position and role of management must be exercised with some caution. It is relatively commonplace in the private sector for management to advocate a "no union" vote, but such an overt role in the public sector is less common. Management advocacy, however, has to be undertaken with caution.

While the verbiage may be somewhat different from jurisdiction to jurisdiction, the end results are fairly standard. A kind of labor relations common law has grown up over the years stemming mainly from decisions of the National Labor Relations Board and adapted to meet the needs of a particular jurisdiction. One of the major complications of the public sector is that a whole set of institutional arrangements were already in place before the introduction of labor relations processes. For example, civil service laws and rules, or other central personnel policies, have long limited the right to discharge except for just cause. In those areas of public employment where such protections have existed historically, obligations of discharge because of union activity may not appear as frequently as in the private sector but are not unknown. Another example of public sector complication is the presence of laws and rules which govern the fiscal procedures of governmental agencies. It is unlikely that a public agency will have the freedom of action to influence the result of an election unilaterally changing conditions of employment while it is in process.

While the right of management advocacy exists, public employers appear to be substantially less aggressive than private employers. In most jurisdictions, the standard prohibitions apply. Management is prohibited from (1) interferring with or coercing an employee; (2) dominating or interferring with the formation or administration of any union; or (3) discriminating against any employee for the purpose of encouraging or discouraging membership. From such provisions have emerged on a case-to-case basis protected rights related to the labor relations process. In most jurisdictions, a similar list of prohibitions are also applicable to unions.

Thus, management advocacy in the public sector is subject to the constraints of the traditional but more recently introduced labor relations process and whatever prior institutional restraints were in place. I cannot speak with authority on the federal scene, but it has been my experience at the state and municipal level that in the initial stages of the introduction of labor relations processes, management has tended to be both unprepared and uninformed. Initially, management has tended to underestimate the importance of unit questions, failed to recognize the need for appropriate exclusions so that adequate staff would be available to support the negotiating process, and has not been aware that the process did not end with the signing of an agreement or the importance of administering the contract once agreement is ultimately reached. In short, public management has not been willing or prepared, or both, to manage.

Once a unit question has been resolved and a union is in place, the real fun begins. Most public sector labor relations laws mandate some sort of impasse procedures which may be invoked by one or both parties, or by time constraints, or both. The prohibition against strikes, or the requirement that impasse procedures be exhausted before a strike becomes legal in those jurisdictions which grant a limited right to strike, places a heavier reliance upon impasse procedures and the use of neutrals than has been traditional in the private sector.

Again, there are sets of rules which apply, although perhaps not as well defined. To the list of unfair labor practices must be added the duty to bargain in good faith, equally applicable to both sides. The improper practice charge arising from the table is a legitimate way for one or both parties to resolve scope of bargaining questions. A not so legitimate use is the filing of such charges as a method of pressuring or harassing the other party. If and when agreement is reached, this type of charge is usually dropped.

In situations where there is no previous bargaining history, it usually takes a while before the parties learn what has become a ritual for experienced bargainers. In the early days of PERB, for example, we found that mediators spent almost as much time instructing the parties on how to bargain as they did mediating. In our early days, it was not unknown for public management to float its final proposal almost immediately, thus leaving nothing for the mediator to work with. Seven years later, needless-to-say, this no longer happens. To state the obvious, it is the best of all possible worlds if the parties can work out their own agreement without third party assistance.

Mediators and other neutrals use a variety of techniques which, hopefully, meet the dictates of the particular situation. A neutral can only be of assistance if the parties are willing to participate in the give and take of bona fide negotiations without forcing the other party to give away the store. What is required on the part of both parties is the development of strategies that effectively use impasse procedures to bring about agreements that both can live with. All labor disputes are eventually settled. The parties may not live happily ever after as in fairy tales, but at least the process means that both had a voice in the outcome. From the point of view of one party or the other, the result may not be a clear cut victory, but there is always the next round.

The single most controversial element of public sector labor relations continues to be procedures by which disputes are settled. The traditional union viewpoint has been and still continues to be that meaningful collective bargaining requires the right to strike. Indeed, when the Taylor Law was passed seven years ago, it was considered an anti-labor law because of its prohibition on strikes, and also because of the penalties which it imposed on employees and their unions who engaged in strikes. At that time most public sector labor relations conferences concerned themselves almost entirely with the effect of the right to strike or deterrents which should be made against the strike.

In these intervening years, the climate has changed considerably. Unions still feel the need for the right to strike, and certainly as a minimum want the penalties for striking removed. Our experience with the Taylor Law in New York State indicates that there can be meaningful collective bargaining without the right to strike. There inevitably exists the "possibility of a strike" even in the face of strike prohibition. This change comes about because of the recognition of several basic elements, among which are the following:

1. No law will prevent all strikes. Even under the most severe penalties, given certain circumstances, employees will withhold their services. The goal is to minimize these job actions by eliminating the need for them. A major part of this is to provide positive and constructive alternatives for dispute settlement.

2. The strike, in many public sector disputes has not proved to be the pressure tactic which it was originally thought to be. Increasingly, many public sector employers are willing to tolerate strikes and reduce their impact by providing substitute means of providing services to their constituencies.

3. The strike does not provide finality. It does not settle a dispute. It does bring pressure and confrontation and at best provides leverage on both sides for an agreement.

4. A wide variety of other dispute settling mechanisms are being tried and experimented with as alternatives to the strike for dispute resolution. These include many varieties of mediation, fact finding and arbitration, and various combinations thereof.

With these above factors in mind, my own personal emphasis is towards positive dispute settling mechanisms rather than to rely on the divisiveness and confrontation which are inherent in the strike.

Whatever procedures are utilized, one thing is clear - the increasing emphasis is on the systematic and orderly resolution of disputes, and third party neutrals are being utilized in an ever increasing variety of ways to help settle these disputes--mediation, fact finding, arbitration and a wide variety of combinations thereof.

As I have implied, the day-to-day administration of a contract is as important, and perhaps more so, as its negotiations. More and more public sector contracts contain grievance procedures which have binding arbitration as the final step. Grievance procedures have a strong tendency to gradually replace whatever institutional arrangements were in place governing discipline and discharge prior to the introduction of collective bargaining. While management tends to resist binding arbitration as long as possible, failure to develop a satisfactory means of resolving disputes arising during the life of the contract often means that minor irritants and disputes which could have been resolved through a well-defined grievance procedure wind up cluttering the bargaining table and making negotiations that much more difficult because such items have to be negotiated out one by one.

Over several negotiating rounds, grievance procedures with binding arbitration as the final step have largely replaced prior procedures established by statute and executive order. Adversary proceedings before an arbitrator, or just the threat, very often provides much sharper management insight into what actually goes on at the institutional level than ever existed before.

The traditional Civil Service function, of course, continues. In New York State this means the traditional personnel function. There has, however, been one substantial change. Both the central personnel agency and departmental personnel people traditionally viewed themselves as neutrals, even though employees may not have always shared this view. In part, this attitude stemmed from a traditional view of civil service - the so-called merit system designed to correct the evils of patronage and the spoils system. Under the impact of collective bargaining, personnel people are gradually recognizing their role as instruments of management.

Among the realities which have to be faced once a bargaining relationship between teachers and school boards becomes firmly implanted, is the changing nature of the role of state education departments. Education commissioners and departments have traditionally viewed themselves as neutrals vis a vis local boards of education and teachers. While the role of education departments varies widely from state to state, the more comprehensive education departments have had a role, directly or indirectly, in effecting teacher terms and conditions of employment.

As the terms and conditions of employment of teachers and other employees are set by contract rather than unilaterally by the school district or by state law and departmental regulation, the neutral role of state education departments begins to be viewed with suspicion by education employees, particularly teachers. They perceive a steady flow of management advice flowing to school boards and, even though the great volume of this flow has relatively little to do with labor relations directly, come to view state education departments as being on the management side. Basically, their perception is correct.

One problem is that state level educational personnel have sometimes been slow to recognize what has happened, and to a certain extent what has always been the case. State education departments are gradually being forced to recognize the necessity of some rethinking of their role, if not their activities, as public employee bargaining become a permanent fixture on the landscape.

In summary then, I would make the following points:

1. Increasingly, citizens of our democracy want to participate in the decisions which vitally affect them.
2. This element of human nature has led us to the point where we are well on our way to becoming a negotiating society.
3. In one of the most sudden and dramatic changes of our society, public employees are demanding, and getting, a role in bilateral determination of their conditions of employment.
4. Some 37 states have responded to this development with a wide variety of laws and executive orders. The federal government has utilized a series of executive orders as well as a variety of survey and prevailing wage systems to assure that federal employees receive wages and fringe benefits which are comparable to their counterparts in the private sector.
5. This major new development will require a new concept of public management at all levels. This will call for many varieties of management training and development programs.
6. It is my personal belief that the public sector is indeed a very different world than the private sector. As such, it calls for major modifications and adaptations of the collective bargaining process.
7. No matter what procedures and systems are ultimately utilized, there will be a rapidly expanding role for all types of neutrals, mediators, fact finders, arbitrators, boards, commissions, etc. to assist parties in peaceful resolutions of disputes.

The key question remains -- will this new negotiating development bring about better government, better schools, better mental hospitals, better universities, better correctional institutions, better beauracracies and indeed better military organizations? My short, unequivocal answer to that is it will. That answer is conditioned on such basics that both parties will learn how to use the bilateral decision-making process as it should be used; that neither party abuses the process; and that government accept its responsibilities to strike a fair and reasonable balance between the interests of government the employees of government, and the public who must evaluate the service performed in light of the cost of that service. Given this type of development, I believe that this new frontier of management offers both challenge and opportunity, adaptation and promise. I believe that the democratic government is capable of doing the job well.

CURRENT PROBLEMS AND FUTURE SOLUTIONS: RESPONSES TO THE NEW GAME

Don Wollett, University of California-Davis

Donald Wollett

The subject is "Current Problems and Future Solutions" and I know it is not possible in the short period of time that we have to talk about all of the current problems, so what I'm going to say and I'm sure what Wes is going to say is illustrative, not encyclopedic. I thought I would talk about three subjects: one is school funding and statewide bargaining, secondly, I will talk about some of the problems that arise, where provisions of collective bargaining agreements appear to conflict with other state statutes and other statutory and regulatory schemes for the management of school affairs. Finally, I'll mention some problems that arise with respect to the scope of collective bargaining.

First, with respect to school funding and statewide bargaining, which was touched on yesterday noon by Senator Moscone, I cannot say that this is a constitutional problem everywhere. It is in California where the case of Serrano vs. Priest is still alive and well. Presumably, sometime in the next two years, we will be moving to a very different kind of system for the funding of education with a great deal more emphasis on state support, and it may well be that other states will follow that lead. In any event, school funding by the state perhaps exclusively will inevitably lead to some kind of statewide bargaining. Bargaining at the state level could take many forms. One possibility would be to have bargaining at the state level over restricted use allocations to local school districts, that is, allocations of money for ear-marked purposes. Obviously the amount of money available per pupil to Los Angeles ought to differ from the amount of money allocated to say Davis, because of differences in the cost of living. So you would have bargaining at the state level over issues of that sort, and then bargaining at the local level over non-restrictive use allocations. Is it going to be spent to add staff and reduce class load? Is it going to be spent to increase salaries of the current staff, or what? Probably you would have some kind of tier bargaining and there are a lot of problems involved in that from the organizational point of view, because you may have one organization representing the teachers in Los Angeles and another organization representing the teachers in San Francisco, or to bring it to Illinois, say Chicago and Springfield. Somehow, those organizations are going to have to arrange some kind of coalition bargaining or cooperative bargaining to be effective with respect to their bargaining in Tier One, which is the state level. What they do at the local level is a matter of local concern. Furthermore, this bears on the question of the role of the State Education Agency in the bargaining process. It might well be that the management bargaining representative for Tier One bargaining would be the State Education Agency, or it might be some specially created agency. There would be much logic to having the present State Education Agency perform that function.

The second thing I wanted to get into was the matter of conflicts between collective bargaining and other statutes. The sharpest conflicts seem to arise in the context of grievance arbitration. Tenure which deals with job security is a good example of such conflict. Suppose you have a provision in a collective bargaining agreement that reads as follows: "No teacher will be disciplined, reprimanded, reduced in rank or compensation, suspended, demoted, transferred, terminated, or otherwise deprived of any professional advantage, without just cause." That's the end of the provision. Now I didn't just dream that up. There are collective bargaining agreements between teacher organizations and school boards that contain that kind of language. One of the collective bargaining agreements with that kind of language was in New York State, between District #3 of the Township of Huntington and the Associated Teachers of Huntington. That went to litigation and the school board attempted to invalidate that provision. Any alleged violation of the agreement was subject to final and binding grievance arbitration, so if a teacher was dismissed, allegedly for a good cause, which he/she claimed was without good cause, that matter could go to binding arbitration. A contractual tenure system was created by this collective bargaining provision. In this litigation the school board attempted to invalidate the provision on the grounds that to have an arbitration provision, of that sort, which would enforce job security provisions of the kind I recited, would be in conflict with the New York State Tenure Law. The latter statute allows a teacher with tenure to challenge a disciplinary action by appealing either to the Commissioner of Education or by instituting a court proceeding. The Court of Appeals of the State of New York rejected the school board's contention and held that the statute did not provide the exclusive means for review. Therefore, to provide another method for protecting tenure, job security, and indeed to protect teachers against other forms of discipline, something less than dismissal, was permissible. The pertinent quote from the case is as follows: "The legislature has given a tenured teacher a choice of two methods of statutory appeal, if he decides to challenge an adverse action of the school board, but it does not follow from this that the school board is inhibited from agreeing that the teacher may choose arbitration as a third method of reviewing its determination." There have been other cases arising in the context of grievance arbitration where similar conclusions have been reached, particularly, and most dramatically, with respect to non-tenured teachers. For instance, the case in Michigan Warren Consolidated School's where probationary science and mathematics teachers were dismissed on the basis of several classroom observations. In that case the collective bargaining agreement provided that discharge shall be for just cause and shall be preceded by the faithful execution of the evaluation procedure, the arbitrator sustained the grievance. His comment was as follows: "Just cause for discharge means that substantial and consistent efforts toward correcting deficiencies have convincingly shown it is futile to expect improvement. In this case, I have no quarrel with the professional evaluations made by the administration. Furthermore, it has not been shown that they lack fairness or impartiality. What is lacking, is sufficient depth in the evaluation process." Now, to put that a different way, the arbitrator viewed the evaluation process as designed to perform two purposes: one, to warn a teacher that there was a problem about his performance; and two, to help him improve that performance. In this case the arbitrator concluded that the evaluations conducted by the school board had failed to serve either purpose.

Another case that is similar is a case in New Jersey that involved a failure by a school board to rehire two non-tenured teachers. The collective bargaining agreement gave the school board direction as to whether or not to re-employ non-tenure teachers. However, the agreement contained a contractual time by which notice of non-renewal had to be given. The teacher organization argued that the teachers had not received notice of non-retention by May 1, which was the contract date. Therefore the teachers might regard themselves as having received favorable consideration by the board and to be entitled to a contract for the ensuing year. The school board conceded that the required notice had not been given, but asserted among other things that the request for reinstatement was beyond the power of the arbitrator. There, it relied upon an explicit New Jersey statute which provides that "no teaching staff member shall be appointed, except by a recorded roll call majority vote of the full membership of the Board of Education appointing him." The arbitrator concluded that the statute did not preclude him from furnishing an appropriate remedy. He cited the authorization for binding grievance arbitration in the New Jersey collection bargaining statute for public employees, and held that the grievant should be regarded as having been properly awarded a contract for the school year 1971-72.

By way of another illustration, in Michigan, a school board attempted to rely on public policy to justify its failure to comply with contractually mandated class size limitations. The board argued that overloading in classroom size, that is in excess of contract maximum, may properly occur because of the school board's desire to adhere to a neighborhood school concept. The arbitrator disagreed, and found this an unacceptable basis for violating the explicit language of the collective bargaining agreement.

One of the ways to deal with this problem, and the way which I personally prefer, is to have in the collective bargaining statute which is operative in the state involved, a provision which is pre-emptive in effect and which says that: "Any provision in a collective bargaining agreement negotiated between a public employer organization and ratified by a legislative body takes preference over conflicting state laws, state statutes, rules and regulations." That kind of provision will wipe this kind of problem out of the courts, or at least it should. That is one of the provisions, by the way, in the Moretti bill, AB-1243 in California, to which Senator Moscone made reference yesterday.

The other thing I want to talk about is scope. Something that Mike Lieberman was concerned with yesterday. I'd like to make some comments on scope of bargaining. There are a number of statutes, public employee bargaining statutes that purport to restrict the scope of bargaining. The Nevada statute is illustrative. On the one hand it imposes on an employer the duty to negotiate in respect to wages, hours, conditions of employment. Then it goes on to say, same section, different paragraph, that: "each local government is entitled, without negotiation or reference to any agreement resulting from negotiations to direct its employees to hire, promote, classify and so on, to relieve any employee from duty because of lack of work or other legitimate reason, to maintain efficiency of its operations and to determine the methods, means and personnel by which its operations are to be conducted." In other words, the Nevada statute writes a kind of management prerogative provision into the statute. Hawaii does something of the same thing, except in Hawaii it's something the employer need not bargain about, it's illegal for him to bargain about such matters.

Pennsylvania has a management prerogative clause in its statute similar to the one in Nevada and that's led to some litigation. This is kind of an interesting case because it's so involved, and because it indicates that among other things, this pre-occupation with scope of bargaining issues is a bonanza for lawyers. In this case, the Public Labor Relations Board in Pennsylvania held 21 disputed items were not negotiable as matters of inherent managerial policy, under the limiting provisions in the Pennsylvania statute. These were the items included: "The availability of proper and adequate classroom instructional material, time off during the day for planning, timely notice of assignments for the coming year, separate desks and lockable drawer space for teachers," (none of these things were negotiable under this decision) "a cafeteria for teachers in the high school, eliminating such non-teaching functions as hall, bus, study hall and parking lot duty, eliminating schedules which require a teacher to teach two consecutive periods in two different buildings," (that's the anti-sprinting clause) "eliminating the requirement that teachers substitute for other teachers during planning periods, teach in non-certified subject areas, chaperone athletic activities, unpack, store and otherwise handle supplies, time each week for association meetings, free access to a teacher's own personnel files, right to leave the school building during the school day, if not teaching, preparation time for special teachers equal to that for other teachers, class size, consultation in determining the school calendar, school holidays and vacations, staff meetings during the school day, conferences with parents during working time, limits on teacher load for secondary teachers, and planning time for elementary teachers." All of those things were held to be non-negotiable and within the sphere of inherent managerial prerogative. Subsequently there were two changes in the personnel of this board, the Public Labor Relations Board in Pennsylvania, and at a rehearing the Board reversed itself on five of the 21 items at issue, and in addition stated that in a different milieu or context consistent, certain of the remaining sixteen specifications might be found to be bargainable.

Following the rehearing both the employee organizations and the school board appealed, the trial court affirmed the board as to the sixteen items which it had held non-negotiable and reversed itself as to the five items which it held negotiable, thus returning matters to the posture they were in prior to the rehearing. The intermediate apellatte court affirmed the decision of the trial court. So big deal, how not to reach an agreement might be the lesson to draw from that!

I would argue that as a practical matter, with the exception of what dividends the lawyers get out of this kind of thing, employer, administration agency, court and legislative pre-occupation with the scope to the negotiations question is "much-a-do-about-very-little." Indeed it may be mischevious as well as mistaken. What is frequently overlooked is the fact that "good faith" negotiation does not foreclose an employer from saying "NO". He is not required to agree to anything or to make any concession.

The thesis that the-importance-of-the-scope-question-is-exaggerated is predicated upon two propositions. The first is that a negotiator should approach the bargaining table in a spirit of meeting problems rather than avoiding them by saying "it isn't bargainable," and of trying to find ways to reach an agreement rather than identifying obstacles which make settlement impossible. If an employee organization proposal is perceived by an employer as reflecting a problem of genuine concern to the employees, there is much to gain and little to lose from talking about it. In focusing on the facts it often turns out that the problem is more fanciful than real, that it can be handled more appropriately outside the context of periodic negotiations, or that it makes no sense from either party's point of view to deal with it as a fixed provision of a collective agreement, or that it can be dealt with without invading interests in respect to which the employer feels it must retain the power to act unilaterally, or that it can be traded off. I suggest that this approach to the scope of negotiations question is realistic and constructive. If one is willing to be imaginative in dealing with a proposal and is motivated by a desire to reach a negotiated settlement and acceptable accommodations, generally agreement can be reached. If one is unwilling even to consider certain proposals, conflict is a certainty and exacerbation of a dispute is a likelihood.

The second proposition upon which my thesis is based looks to the realities underlying the proposals which an employee organization puts before the employer. Some of them will represent institutional imperatives, but most of them are manifestations of the ambitions, fears and frustrations of the employees in the unit. These proposals may, I think, be placed in three groups for our purposes here: first, those proposals which are psychological and political. They wash out in the negotiating process not because they are non-negotiable, but because they are not seriously made. For management to react to them by asserting that they invade prerogatives is gratutious and counterproductive. The second group includes proposals which do intrude in to policy matters usually thought to be in the control of management, which are seriously made, but which are subject to trade-offs for improvements in wages, hours and working conditions. The third group consists of proposals which are intrusive, which are seriously made, and which may not be readily tradeable. These present problems, but usually they are not insoluble if they are dealt with on their merits rather than avoided on theological or conceptualistic grounds.

Finally I wanted to call to your attention, because I think it illustrates the Mickey Mouse character of a lot of this stuff, two cases in New York. One of them is the West Irondequoit Board of Education case. In 1971 Robert Helsby's board held that a numerical limitation on class size is not a mandatory subject for negotiations because it involves basic educational policy. However, PERB (Public Employee Relations Board in New York) stressed that the impact of class size on the terms and conditions of teacher employment is a mandatory subject. The difficulty of maintaining this distinction as a practical matter is apparent. Later the same year PERB ruled that the New Rochelle School Board was not required to negotiate over budget reductions which resulted in the elimination of departments and the termination of about 140 positions, causing the lay off or dismissal of about twenty per cent of the professional staff. The doctrine which emerged from this case, the so-called New Rochelle doctrine, holds that a school board is not required to negotiate about budget decisions; it may do so but it doesn't have to; but it is required to negotiate about the effects of those decisions; including, presumably, such matters as severance pay, order of recall, "bumping" into other departments, and so on. Now, what is the result when PERB's position regarding budgetary allocations is considered in conjunction with its position in the Irondequoit case regarding class size? If a decision in respect to a budgetary allocation is not the subject of mandatory negotiations, but its impact is, and if one of the impacts of the budgetary decision is an increase in class size, class size would then appear to be a mandatory subject of negotiations under the New Rochelle doctrine. But that would be contrary to the position taken by PERB in the West Irondequoit case. PERB itself recognized some difficulty and tried to make a fine distinction. They said, "At first look, class size and teaching load may seem to be the same, but as we see them, they are not. The first represents a determination by the public employer as to an educational policy made in the light of its resources and other needs of its constituency This decision may have an impact on hours of work and number of teaching periods which are clearly mandatory subjects of negotiations." That's the end of the quote. This presumably means that a school board need not negotiate over a proposal to limit class size to a prescribed maximum, but that it must negotiate over the number of students for which a teacher can be required to take responsibility. If that analysis is correct and I think it is, the distinction that's been drawn in these two cases seems to me to have little or no practical significance, except to emphasize the importance of having a sophisticated hired gun at the negotiating table. Here again, I'd like to come back to the Moretti Bill and wind up by saying what was recommended by the Aaron Committee and what found its way into that Bill, was a provision that did not undertake to limit the scope of bargaining, but said rather, "what the parties bargain about, as well as the kinds of bargains they make, is subject to the bargaining process." I think that's a sensible way to deal with this problem.

CURRENT PROBLEMS AND FUTURE SOLUTIONS: RESPONSES TO THE NEW GAME

Davis Wesley Wildman
University of Chicago

Wesley Wildman:

"When I hear Donald review these "grotesqueries" from around the United States I'm overwhelmed with the notion that teachers in Illinois, which is one of the last so-called large Northern Industrial States without a statute, are better off than the teachers in Pennsylvania, than the teachers in New York, than the teachers in Michigan, than teachers elsewhere. We're in the state of nature here in Illinois, when a teacher group wants bargaining very badly it hustles the board and gets it. If it wants very badly to negotiate about something about which it feels strongly, but under some of these other bills it might not have to bargain about, the board bargains about it. We've got 300 to 325 contracts here in the State of Illinois, covering more than half of our 110,000 teachers in the State. Maybe you'd be just as well off by holding back or forestalling the over-goverened society not to push for these bills in states like Illinois. I don't know, I'm not as concerned about it as I used to be. I'm one of these hired guns, at least part of the time, that Don talks about and a person who would presumably benefit from having this kind of litigiousness around all of the time in the State of Illinois. In spite of a management orientation, at least a partial management orientation, and maybe what some of you will judge in the next ten or fifteen minutes to be a management bias, I tend to agree with everything that Donald has said about this question of bargainable subject matter.

I'm a little uncomfortable here today because we have a tape recorder running and I've got to exercise a little moderation and a little care in that regard. Maybe there's a labor relations lesson in Watergate for us. You cannot be sure of not being over heard, bugged or otherwise, and so sit down in a room, preferably darkened, with the person with whom you want to communicate confidentially, talk about marlin fishing, baseball, Watergate, whatever comes to mind, whatever is of interest to you, write out what it is you want to say, exchange the pieces of paper, keep talking about the other stuff. When you're through, tear them up, burn them, flush them down the toilet. That's the only safe way to communicate these days. We had an experience here in Chicago a year and a half ago. The Chicago Board of Education is a large eleven member political outfit which had felt itself badly used over the years by the teacher organization. It felt that all the economic and political power was over on the teacher side, and it was going to redress that imbalance by going into public bargaining, public negotiations. They did a survey of all the other big cities in the United States. All of the other big cities in the United States said, "Well, we don't do it that way". A couple of them said that they tried, and they found that it didn't work. Contrary to my advice, I told them not to, wrote them memos, I told them I would not participate in negotiations if they were going to be public. They repudiated my advice and went out into public session. For two months, nothing was done at all, and we ended up with the longest teacher strike we have had yet in the City of Chicago. Not long in comparison to some of the other big city teacher strikes, but it did run eleven days, which, given the interventionist character of our mayor's office on strikes in the City of Chicago, is a long time. This was without question, partly a function of the fact that nothing got done at that bargaining table for two months. Despite the public posturing and gesturing for constituencies, fooling around, the contract was finally settled in private, in and out of the mayor's office and all the rest of it. All the big issues hadn't even been touched or dealt with in sixty days of negotiations, about 150 table hours.

All right, with those observations off my chest, let me focus for just a couple of minutes here rather globally, and I'm not at all going to be encyclopedic, about some the current problems and issues that I think all of us are going to be looking at the next year or two or three, no matter what state we are in, in the teacher bargaining business. Last year was my twentieth anniversary in labor relations and I was reflecting on that, and deciding that I didn't want to spend another twenty. I remembered thinking back that about ten of that had been spent in the private sector, bargaining with people like Jimmy Hoffa and so on, and about ten of it had been spent in the public sector, bargaining for Boards of Education and libraries here in the State of Illinois and so on. And I knew I felt way down deep that there was less of a feeling of satisfaction, less of a feeling of having done a tough, necessary job well, in bargaining teacher contracts than I had ever felt in negotiating in the private sector. I decided to write a kind of a swan song piece on this teacher bargaining thing, I'm tired of it as an academic and as a practitioner. I wanted to do a wrap-up piece and I got to wondering "Why is this true?" And I came to the conclusion that collective bargaining for public school teachers, at least in most of the states that have the kind of legislation that the states have that are represented in this group here today, for teachers in those states, and for school boards, for the employers in those states, collective bargaining is simply not as significant and impactful a phenomenon in the schools as it is in the private sector. There are three reasons for this. In explaining to you my reasons for taking this position, I'm going to touch briefly on some of the problems that we do face even though my thesis may be accurate, bargaining is not as significant in education, and is not going to be in education, as significant as it is in the private sector.

The three basic areas, the three gut areas to the private sector labor agreement, and I don't care whether it's a ten or fifteen page contract or whether it's a 150 page steel worker contract, those three essential areas have to do with what we call the effort bargain, the money question: how long do I work? How hard do I work? And how much money do I get paid for it? When I say money, of course, I'm including fringe benefits and all the rest of it. The second key area has to do with the application of seniority the seniority principle: The allocation of scarce job opportunities. How do I get up, promotionally, if there is a better job, that's going to pay more money? If people have to be laid off, and we get that frequently in the private sector, how are people going to be laid off? In the United States we've adopted the seniority principle, or some modification of the seniority principle, for handling this problem of the allocation of scarce positions. The third area, and Don's touched on it already here this morning in terms of the teacher contract and it's importance in education, the so-called "just cause" provisions of the private sector labor agreement - that freedom, that essential freedom, from arbitrariness and discrimination. A blue collar guy can say, "You know I've been here ten years and the foreman doesn't like me anymore and I'm getting old and slowing down a little bit, just barely perceptibly, and he's going to let me go." No way. These are the basic guarantees and protections that the labor agreements provide in the private sector.

Can collective bargaining do this kind of job for teachers? Yes and no. Number one, money, no question but that it's been important in teacher bargaining in the United States since 1962 since we got this thing started in New York City. But to offset the significance that money bargaining has in education and to offset to an extent this parallelism with the private sector, is the significance and importance of bargaining over money and fringe benefits, I think is the fact that, all the rhetoric to the contrary notwithstanding, is that a strike just does not play the same kind of role in school bargaining as it does in the private sector. The reason for this is that the livlihoods and the economic well being of neither party, the school board nor the teacher organization, is very often involved in teacher strikes. It simply isn't. Reference was made to these sorts of things yesterday, when David Selden said, "We get beaten in some of these strikes". Teachers do get fired. When they make a mistake in a very small elementary district by walking out in May, it's a stupid thing to do anyway, they may get fired. But it doesn't happen very often. You people know that, I think, as well as I do. If you're in a medium size or larger district, the risk of losing your livlihood permanently as a result of a strike, is just simply not very great. Not true, necessarily at least with low seniority people in the private sector. Of course we know the school board doesn't lose anything. It has no immediate profit motive, there are political pressures, which take the place of the profit motives, some people argue, I don't believe it, at least not in terms of the very short run.

About the seniority area. You all know that the schools are relatively flat organizationally. You're either in a bargaining unit or you're not, and if you're in you're going to be making almost exactly the same as everyone else working in that bargaining unit. You may have an extra-curricular position, but there are not a lot of promotional vacancies, movement up, movement down, within the bargaining unit. It's a flat organization. You're either a teacher or you go to the administration. No counterpart, really, for that in the private sector, some, of course, but on net, private sector contracts, in this respect, in the organization of private sector industries look different. We bargain seniority clause. I'm well aware of the fact that there are seniority clauses and modifications of the seniority principle that show up in teacher agreements. They can become very important to school administration and teachers on certain conditions, no question about it. But I still submit to you, that the concept, the application of the seniority principle, no matter how thorough you dealt with it on the teacher contract, is just not the same biting nature as it is in the private section agreement.

"Just cause", that's an easy one, you've already anticipated me. Teachers have "just cause" and have always had "just cause" type protection under the tenure statutes in most of the states in which we have a lot of sophisticated teacher bargaining. We've had pressure in teacher bargaining for due process and "just cause" type protection for non-tenured teachers. Don has talked about it, I'll touch on it just in passing as I go.

Within this context, then, and let's accept for the sake of argument, that maybe my thesis is correct, that the labor agreement that collective bargaining can't have the same kind of impact and significance in a school district that it can in the private sector, because of the nature of the school organization and the nature of already legislated protections for teachers. Still the thrust of teacher bargaining, the thrust of any collective bargaining, has to be into these areas. We do still find continuing pressures, and the problems that we're all going to be facing in the next decade, or at least the next five years or so, until we move to some form of state bargaining and probably even after that, are going to continue to be couched in these terms.

Let me just cover where we stand at the moment and where we're going in terms of these issues in teacher bargaining. Money is still a number one issue in most bargaining relationships. We're not at the state level, yet. We're not going to move there, evidently, as quickly as I had thought. Everybody of course, as you heard, is still predicting that we will. The dynamics of money bargaining don't seem to differ much as a function of fiscal dependence or independence around the United States - whether the Mayor is playing a mediatory role in the big city bargaining or a fact finder role, or a state legislator has to get into the act in big city bargaining, and whether you, in effect, add a member of the state legislature as an intermediary who becomes a part of the management bargaining team; or whether you've even got the situation, as we do in some communities, where the community is voting, before or after the fact, on the budget and on the teacher salary increase, the dynamics of bargaining in these districts, I don't think, differs a very great deal. You've still got the allocative problem: What are you going to do within the money available to you? How are you going to parcel it out? All of the mechanics may differ depending on whether you're in one or another of these situations, that I've described here, bargaining over money looks somewhat the same. I think that this question of fiscal independence or fiscal dependence, and its impact on bargaining is rapidly dying out.

I think there's a big battle shaping up. I see the outlines of it. It runs something like this. The assumption was for many years in the United States, that public employees, I'm not just talking about teachers now but municipal employees, state employees, as well as public school teachers, received considerably less than their private sector counterparts. That's probably not true today, but in any event, we're getting some pretty good research out now. There were some hints in the literature a year and two and three years ago, particularly in cities like New York. Under the impact, under the aegis of collective bargaining, firemen, policemen, etc., public sector salaries were starting to outstrip, particularly in terms of available fringe benefits, public sector employees were starting to outstrip their private sector counterparts. Some bad research, some non-research, some guesses started to pop up into the literature. Now we're getting some sophisticated stuff, if any of you are interested, I'll mention to you Ehrenberg's work at the University of Massachusetts, an encyclopedic study he has completed for the Department of Labor. It is highly sophisticated stuff, methodologically, and begins to point the way to the notion that, partly under the impact of bargaining, and certainly as a result of certain other causes, public employees in the United States are not making less anymore than their private sector counterparts. They are, indeed, beginning to outstrip them considerably.

What applicability does this have to education? I think this is going to become relatively common knowledge in the very near future. State legislatures are going to begin to focus on this question, and the public is going to begin to focus on it, and certain kinds of battle lines are going to be drawn on a larger scale than we've been used to in terms of public sector labor relations. You've all seen, I'm sure, some of the studies, at least, on the impact of bargaining on teacher salaries. Without being overly critical because the methodology is extremely difficult, the best labor economists in the United States have only in the last ten to fifteen years done anything definitive regarding the question of what impact does private sector bargaining have on wages in the private sector. Studies are hard to make and I'm hoping I'm not being over critical when I say the stuff wasn't much good, the studies that we have to date are not much good. Most of them, not all of them, but most of them indicate a negligible impact, i.e., teacher bargaining, surprising to a lot of people it has not had much of an impact on teacher salaries. A few of them indicate a moderate influence, some of them suggest that, yes, teacher bargaining has had an impact on teacher salaries, it's small and there was a trade off in terms of higher class size or something else in teacher labor agreement that allowed the board to recoup the loss that it suffered at the bargaining table in terms of salary and fringe benefits. This is being looked at and I don't know what the answer is. Here again some very good stuff is beginning to come out, Jay Chambers at the University of Chicago is beginning to look at this thing, really hard, and a few other people. I would imagine that within two or three years we're going to have much better data than we have now as to whether or not teachers are faring well as Ehrenberg is saying is true of other public employees. My hunch is that they are not, but in any event I think it seems clear to me that whatever the economists tell us in the next three or four years about whether teachers have done as well relatively as firemen and policemen and public sector employees, generally, and particularly in the large cities, the public image without any question, is going increasingly to be: teachers have got a good deal. You know all that kind of stuff, the school boards throw at you at the bargaining table. By the time you're thirty, thirty-one you're making $15,000.00 a year and the way salary scales are going in Chicago and the other big cities, you can look for $20,000.00 plus at the age of 40. You've got a lifetime contract from the community. It's a nice clean, psychologically rewarding work, magnificent pension plan and all the rest of it. I think irrespective, this focus is going to be made on the public sector in general, and whether it's fair to drag teachers into these comparisons or not, I think increasingly the public image is going to be a public employees generally, and teachers in particular, as having very good jobs and as being very well paid indeed.

I think as teachers pushing bargaining at the state or local level as they begin to lobby more aggressively with this enormous political power that they're beginning to generate, I agree 100 per cent with what Mike said yesterday about the fact that whatever impact bargaining has had in the local school district or even on the state level, it strengthened teacher organizations enormously. That's something that we're all going to have to live with and I think it's going to change the face of education in this country, the strengthening that has come as a result of the bargaining movement. It may not be exercised primarily through bargaining but it's there. I think as these teacher organizations begin to lobby aggressively and push for more state and federal money, as the public and the legislatures becoming increasingly aware that the public employees generally and may be or may not be, teachers specifically, are doing better and better. We've got the stage set for very serious confrontations which I think may end up doing a lot of long run damage to the cause of public education in the United States.

I don't know where people are going to line up on this, incidentally. Most administrators are going to be very ambivalent. It's obvious where teachers are going to line up. Strangely enough a lot of board members are going to be ambivalent. I don't know what's going on in your states, but it has not been true not for years in the State of Illinois, that we've had the traditional stereotype of the tax-conscious board of education, that says, "Hey, let's get as little money for education as we can instead of as much." Certainly in the big cities it isn't true. One thing that joins the C.T.U. and Chicago Board of Education, as an example, is "Let's go to Springfield and see how much money we can get for the schools." So I don't know. I don't know who the parties to this dispute are going to be. I'm just sure that it's emerging and that as the teacher organizations with their new-found power focus on this problem and as the academics and others focus on the notion that public employees and maybe teachers are doing better, we're going to have something a little different than we've had in the last ten years in this country. So much for the money question.

I've already said "just cause" is in the statutes or some form of it, we call them our tenure statutes. The push has not been to trade off the tenure protections of the state for "just cause" clauses for tenure teachers although we have a couple of those kinds of provisions in the country now. In other words if you want to fire tenure teachers you go ahead and fire the tenure teacher and let's go to arbitration and get it over with rather than spending $20,000.00 on a tenure case. Get that kind of thing and we are getting it. We've got it here in Illinois in their contracts even though we don't have the magnificent state statute that makes for bargaining. The thrust is not there, the thrust has been to provide some of the same kinds of due process protection, at least due process protections and maybe so even just cause protections for the non-tenure teacher that the tenure teacher has. You know the battle that's going on there. If there's anything in a loose teacher labor market that looks like flag and apple pie to the school board it's their right to do what they want to do during the probationary period. This is one of the few places that the effort of the teacher organization gets squeezed into something they can do and particularly in a young district, that is a district with young teachers and they can deliver something for those folks and they can have a little more security during the first, second, third year of their employment, they'll try to do it. You've got the state set for a lot of battles there and it's still the number one issue in this state, aside from money and bargaining.

Another security and job related issue that we're seeing of great significance in the larger cities right now, is the question of, and particularly those larger cities with declining enrollment, is the question of the relationship between class size and more elementary preparation periods and so on, to total teacher employment. One of the real virtues of Bob Healy here in Chicago, the C.T.U. President who took over from Desmond a couple of years ago, is his candor. When the C.T.U. came into the Chicago Board this last winter, and I'm simply using this as an example, I happen to know what's going on in other cities particularly those cities with declining enrollment and declining teaching staff, he said, "Look we're going to get, come hell or high water, another single preparation period for elementary teachers to begin to put them on some kind of par with our high school teachers who have a preparation period everyday". He was very candid and he said, "We know it's going to cost you 600 more Art and Music teachers to provide relief for that preparation period. We think it's good for kids. The kids are going to get a better shake, having a better rested, better prepared teacher. You know that's a primary argument but I'm not going to deny to you," he said, "that we also have our eye on getting 600 more people employed in the Chicago Public School System, getting 600 more people onto the payroll who might otherwise never get jobs or be laid off, dues-payers, etc." Same thing in class size, no question but that one of the motivations of the teacher organization in the big city where the teachers can generate this enormous political and economic power, the push for smaller class sizes is, in part, not just a desire to improve education, but also highly motivated by desire to make sure that total teacher employment in this district doesn't decline or doesn't decline any more than is necessary.

I don't think this last point has been discussed today, I don't think we have time to do it any kind of justice because it's a very large question. It has to do with the merger of the organizations, the possible merger of the organizations, despite what David Selden said yesterday, I'm still a Lieberman man in this regard, at least in part. It's coming sooner or later, how soon, I don't think we know. I never did think it would come quite as quickly as Mike did, but anyway it's coming, there's no question about that. I think there's the high probability that it'll come with the affiliation of the AFL-CIO and it raises some questions to which Al Shanker and many others have addressed themselves to lately. First there's the question of objectivity in the classroom. I think all one has to do to be the least little bit worried about that at least, just a look at the self-serving demagogic nature of our major teacher organs today. David admitted this yesterday, he alluded to it, it's ridiculous, it's absurd. There's no reason for it going into a profession or at least many teachers in the United States who claim to be a professional, and whether this is going to be exacerbated or ameliorated by the teachers getting together and affiliating with AFL-CIO, changes in the leadership of the organizations, I don't know. Second problem that I see is the question of block voting, political support for legislators who will vote for the things that teachers want and of course this relates back in my estimation to a problem I discussed earlier about the coming confrontation between the public sector and voters in the United States. Now Shanker's argument is, I think it's very deceptively appealing, "What the hell, teachers have always had to fight the problem of objectivity. We've got black teachers, we've got Jewish teachers, we've got Roman Catholic teachers, we've got Protestant teachers, we've got Irish teachers, can an Irish Catholic teacher in New York go into a classroom in New York City and be objective about what's happening on Northern Ireland?" etc., and so on. Good argument, no question about it. Al's argument as well, no more reason why teachers should have trouble being objective with respect to affiliation to organized labor in the United States. The only flaw in the argument, and I'm not posing any solutions to this one because I don't have any, I haven't thought my way through it. I would simply pose this objection to Shanker's argument, presumably Jewishness, Irishness, and Republicanism, being a Democrat, and all the rest of that, presumably within limits, at least these differences among teachers are distributed randomly, up to a point, within the teaching population, we get offsetting impacts and influences. I think you've got a different problem on your hands when you're talking about all 2,000,000 plus public and secondary teachers in the United States, affiliated to, allied with a single organization which has pretty well developed socio-economic policy. I don't know, but I just know that Al's argument, I don't think, is too conclusive on this particular point and it's going to take a lot more thought."

A FEDERAL PERSPECTIVE ON TEACHER LABOR RELATIONS*

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U.S. Department of Labor

I have been reluctant to follow my assigned title, "The Federal Perspective," because 1974 has been a poor vintage year for Federal perspectives. Also, I have labeled my remarks a Federal perspective rather than the Federal perspective because there is no one Federal perspective on teacher labor relations. It makes a significant difference whether one speaks from the perspective of an executive agency, a legislative office within the United States Congress, or from the Federal Judiciary. Even within the Executive Branch of the Federal government, it should not greatly surprise anyone that there are differences in the perspectives which the Office of Management and Budget in the President's Office, the Office of Education in HEW, or the Department of Labor might have on any given topic, such as teacher labor relations.

Such differences among the various parts of the Federal establishment, however, are perhaps not the most serious problem. More disturbing, at least to me, is that while trying to prepare these remarks, I sought quite valiantly to find a perspective on teacher labor relations among what should be the appropriate Federal agencies, but one was not to be had . . . . So, what I am presenting is a personal interpretation stemming from my experience as a university industrial relations librarian and bibliographer in educational and trade union history, ten years of working with the American Montessori movement in setting up a national private school system for preschool education, and most recently, from the experiences and perceptions I have had from working within a Federal executive agency, The Division of Public Employee Labor Relations in the U.S. Department of Labor.

The Division was established in 1970 to provide technical assistance, information services, and training programs for the participants in State and local government labor relations, including both public management and public employee organizations. Since that time, we have conducted labor relations programs of different types for various public agencies, including school districts and their employee organizations, from Alaska to the Virgin Islands, from Maine to Southern California. We haven't made it yet to Hawaii, but we are working on that one. It has been our experience that the rapid growth in public employment and government unionism has resulted in a serious strain on the capacity of State and local governments to respond to the demands being placed on their existing legal and administrative structures for labor management relations. To cope with these demands, State and local governments have at least four major types of needs:

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*The opinions expressed are those of the author and do not necessarily reflect the official policy or position of the U.S. Department of Labor.

1. More extensive research to identify and understand the basic causes of public employee labor relations problems, their relationship to public policy and to other aspects of government, and to suggest alternative solutions for these problems;

2. More adequate public policy frameworks for resolving public employee labor relations problems, including legislation, and sufficiently funded administrative agencies to implement public labor relations laws;

3. More competently trained personnel on both sides of the bargaining table to negotiate and administer labor agreements, together with the greater availability of third-party neutrals to assist with dispute resolution; and

4. Better information services and statistical data upon which the participants in State and local government labor relations can base their policies and administer their respective organizations and programs.

I would add parenthetically at this point that State Education Agencies can and should have _a_ role within teacher labor relations in dealing with each of these major needs. Determining what that role is and how it should be related to other governmental and nongovernmental activities also dealing with these needs is, I take it, a major purpose that we have been trying to accomplish in this Symposium.

The above needs have arisen, as I have indicated, from two current realities: The rapid growth in public employment, and the increase in government unionism or, if one objects to the term, "government unionism," then in the extent of public employee organization. With significant increases in State and local public employment every year since World War II, State and local public employees now number over eleven million, with a projected increase by 1980 to around fifteen million. With expanding governmental functions requiring more highly skilled personnel, a professionalization of the governmental labor force has been progressing at a fairly rapid pace. For our purposes here at this Symposium, it is worth noting that over 50 percent of all State and local government employees function within educational institutions, and that education, using 34 percent of all State and local government expenditures (U.S. Bureau of Census data for 1972-73), is the single most expensive function at that level of government.

Along with this expansion of public employment has come a significant increase in the size and activities of public employee organizations with an increasing demand on their part for bilateral decision-making within their work relationships. Traditional public personnel policies and practices under the demands of these pressures have become less effective for resolving employee morale problems, work stoppages, and other problems within public employment. In terms of trends for the near future, the predictions which the late E. Wight Bakke, a noted Yale University labor economist, made in 1970 are still probably as cogent as anyone's:

> ---- Unionization in the public sector is going to increase rapidly and extensively.

---- Union action in the foreseeable future is going to be militant.

---- The achievement of collective power is going to become the major objective of union leaders for a considerable period.

---- The combination of political and economic bargaining strategies and tactics will disturb for some time the pattern of collective bargaining between public management and public employee unions and associations.

---- The civil service concept of personnel policy and arrangements is going to suffer and be severely modified.

---- The public is going to pay a big price for what public employees gain.

---- Despite this, nothing is going to stop the introduction of and spread of collective bargaining in the public sector.

(Monthly Labor Review, Vol. 93 (July 1970), pp. 21-25)

Underlying Bakke's predictions is that within our current situation we are in the midst of what I would call the fourth great revolutionary change in our governmental personnel system. The first great revolutionary change, of course, was breaking away from the British system and setting up our own government and staffing it with what were considered to be properly qualified people. Coinciding roughly with the Federalist era, this was a period in which we have probably romanticized government employment as being a public service filled by noble, self-sacrificing men. Putting cynicism aside, the Federalist period did leave us with a tradition of public service with concepts and values which still linger: 1) Government employment should carry with it higher standards of integrity and performance than other types of work since it is being done at public expense for the common good, and 2) Government employment is a privilege, and hence, public servants may be expected to sacrifice rights which exist for workers in the private sector of our economy.

The second great revolutionary change took place with the election of Andrew Jackson as President in 1828. Jacksonian Democracy swept away government by the elite, "to the victor belongs the spoils," and the common man came into his own, at least his successful political party did. Governmental personnel systems based upon patronage remained virtually unchallenged in any effective way for the next 50 years or so. It was not until the assassination of President Garfield by a disappointed office seeker that the third great revolutionary change took place: Civil Service reform with the passage of the Pendleton Act of 1883. This Act gave a major impetus to the Civil Service reform movement which was attempting at all levels of government to ensure that public employment be based and administered on merit principles. Speaking in the city of Chicago and as a former resident, I would hesitate to say that that movement has been completely successful. From that time down to our own day, however, the thrust to establish and maintain civil service merit systems has provided both the rhetoric and the ideological rationale for governmental personnel systems.

Along with the civil service reform movement have come parallel developments which have had their impact, directly and indirectly, upon government employment. One has been Scientific Management, a philosophy of management and approach to work-study methods commonly associated with the name of Frederick Taylor. For many working men who were on the receiving end of Taylorism, it became a very bad name. For political reasons, the direct application of the work-study methods of Scientific Management were never extensively utilized in government. Another more direct influence has been the emergence of Public Administration as an academic discipline, being both a scientific field of inquiry in its own right as well as one of the principal means for the professional preparation of governmental administrators and career personnel. Public management within various specialized governmental functions, such as finance, public works, etc., has become increasingly professionalized, and virtually every governmental function has its own professional society or association for practitioners. In the forefront of such practitioners seeking a professional identity and a recognized status on the public management team have been the public personnel directors and managers. Their association was originally founded in 1906 as the Civil Service Assembly of the United States and Canada. Its name was changed to the Public Personnel Association in 1957. Last year, as a result of the merger of the Public Personnel Association with the Society for Personnel Administration, which had represented primarily Federal personnel administrators, the International Personnel Management Association (IPMA) was formed. Along with the professional societies of practitioners, the political jurisdictions at various levels have organized themselves into groups, such as the National League of Cities, the National Association of Counties, the National Association of Regional Councils, and the Council for State Governments. There are also organizations for particular political offices, such as the U.S. Conference of Mayors and the National Governors Conference. In summary, on the public management side, there has been for many years an extensive network of professional and institutional organizations which have played an important role in the determination of public policy and the allocation of governmental resources, including your tax dollar.

Before proceeding to the fourth great revolutionary change in governmental personnel systems, we should take a look at how education, as an institutional system, fits into this picture. The pattern I have described thus far relates to the general functions of government. In many ways, it does not fit the special case of education. Education has always played a very crucial and dynamic role in the political, economic, and cultural life of this country. It is a governmental function which has been shared, not always gracefully, with the Church and other nongovernmental bodies. With America's self-image as the New Promised Land, it has been primarily through the hope we place in "education" that we expect our children to escape the frustrations and disappointments we ourselves have experienced. In our naive moments, we expect education to resolve all the difficulties which our other social institutions, including the family, have not been able to solve. When this does not happen, in our anger we turn upon our educators in yet another "crisis in education." (But I might add that it would be helpful if more of our children did learn to read and write . . . .)

In spite of the central role of education within our society, or perhaps because of it, the governance of education has generally always been done outside the general structure of government rather than within it. While school districts, like municipalities and other local jurisdictions, are "creatures of the State," they generally have been set up with the maximum of local autonomy, often with their own taxing authority. In effect, we have developed a track system for education. One track for most governmental functions, but a special track for education, and never should we let the two tracks cross . . . . When there has been governmental action, it most generally has been done by separate legislation and in administrative decisions which may or may not have been correlated for their impact upon other governmental responsibilities or local needs.

This splendid isolation has had its obvious advantages and disadvantages. It has provided a potential freedom to respond to local conditions although one might question how creatively this freedom has been utilized; it has meant the significant involvement of local citizens on school boards and in policy roles; and it has tended to keep the school system "out of politics," at least, out of the usual political party type of politics. By and large, school systems seem to have escaped most of the worst extravagances of political patronage. But education has paid a high price for this isolation. For one thing, it has not escaped what I would call the Donahue Law of Social Systems: "The intensity of conflict within a social system varies inversely with the number of participants in the system and with the importance of the issue under consideration; while the number of viable solutions to the problems of any given social system varies directly with the number of 'communities of interest' effectively represented within that system." In other words, it is the relative cost-benefits involved in dealing with big frogs in a little pond or small frogs in a big pond. Education in isolation from other social institutions is a relatively little pond; but I will not comment about its frogs.

Education, accordingly, as a relatively closed institutional system, has had its share of intense internal conflict, and its capacity to initiate and sustain viable solutions for institutional change has not been particularly impressive. These characteristics of education as an institutional system have arisen from its strengths as much as from any presumed weaknesses. Local autonomy with local tax support, keeping the school system protected from political patronage, and similar characteristics have traditionally been considered strengths in the manner in which we have structured local American educational systems.

But adherence to these local values, however, has also had its price. Part of that price has been the social cost on a national scale from the effects of inequitable and sometimes discriminatory allocation of educational resources which has happened too frequently within our decentralized structure of local school systems, even though there was no such intent or awareness on the part of individual decision-makers within the separate systems. The recent court decisions on the equalization of funding, on the elimination of sex discrimination in the availability of school athletic programs, and on the rights of handicapped persons to a full and appropriate education are but three recent examples where the cumulative effects of policy decisions arrived at through local autonomy have not added up to the general common good. Another part of the price we have paid as a by-product from maintaining these values is that it has tended to keep any significant educational planning and coordination to a fairly feeble level. It is not that we do not spend considerable time in planning, in attempting to coordinate, but when "push comes to shove," it has frequently been difficult to get any movement. In effect, how can you push a string when others are seemingly either not willing or able to pull their own weight? As a practical consequence, educational agencies, such as SEAs or others at a regional or national level, such as the Education Commission of the States, have generally not been able to mount significant programs on a multi-jurisdictional basis, particularly in controversial areas like labor relations. Yet, most of the major problems confronting American education today cannot be resolved on an individual jurisdiction-by-jurisdiction basis--even with the best of good will, but require comprehensive approaches involving coordination not only with other educational systems at various levels but also with other governmental and nongovernmental bodies. In effect, we are in a real Catch 22 type situation.

Another aspect of the separate track for the governance of education has been the tendency to use extra-legal mechanisms for implementing important functions and responsibilities within education. In areas such as accreditation, for example, the functions handled by the various regional and national associations are not accountable for their standards and decisions to any public body, except ultimately the courts, which have had some interesting cases in this area. While this approach may keep such functions "out of governmental politics" and under the direction of qualified professionals, it does provide a precedent for other nongovernmental organizations, such as unions and community organizations, to share in the governance of education. Analogous to the pattern of professional and institutional organizations which has developed within public management in the general functions of government, the field of education has had its own extensive network of such organizations which have also played an important role in the determination of educational public policy and in the allocation of governmental resources within education.

The isolation of education within its own separate track from the other functions of government may also have affected other aspects of educational policies and practices, such as the development of school administration. As we have indicated, government generally resisted the approach of Scientific Management within its operations. However, within education, as Raymond Callahan has demonstrated in his classic work, Education and the Cult of Efficiency, the management pattern upon which the founding fathers of school administration, such as Elwood P. Cubberley, based their teachings was essentially a business efficiency, industrial model and only secondarily one based upon any theory of learning. In this case, as in others, "the medium is the message." Thus, originally influenced by the theories of Scientific Management as set forth by Frederick Taylor and others, school administration theorists and practitioners later responded wholeheartedly to the Human Relations approach of Mayo and his associates. Without doing justice to the sophistication of this approach, I would suggest that it gave a scientific gloss to the "one big happy family" concept which school administrators liked to project about their respective establishments. In practical terms, this concept has tended to blur the essential differences among what I have earlier called the various "communities of interest" which exist in school systems. As a consequence, school administrators commonly have been reluctant to identify themselves as management or to admit that teachers and support staffs may have legitimate interests different from their own. Accordingly, public management in school systems, like its counterpart in other governmental functions, by the 1960s had become increasingly vulnerable to the fourth great revolutionary change in governmental personnel systems: the emergence of large-scale public unionism, utilizing collective bargaining as one of its major tactics.

The reasons for the emergence of public unionism in the United States during the decade of the Sixties have been the subject of much speculation. Teacher labor relations share in most of the general factors underlying the rise in public unionism, along with some special characteristics of its own. Prior to the Sixties and a striking exception to the other major industrialized countries of the world, the United States had not experienced a significant degree of unionization among public employees. Public policy provisions, notably legislation and administrative agencies to handle specifically labor relations questions--as contrasted to personnel matters, were virtually nonexistent within most governmental structures.

Some of the more general explanations for the lack of unionization in the public sector are that, unlike private sector employees in commerce and industry, public employees never had a national labor policy which supported their efforts to organize unions and associations. As Frederick C. Mosher has observed in his book, *Democracy and the Public Service* (1968), until the 1960s almost every national administration had opposed the organizing of effective labor unions or associations within government--even while some of them deemed it desirable, even mandatory in the private sector. Indeed, the Janus-like perspective of many liberal political leaders, including FDR, on the labor issue during the first six decades of this century was remarkable. At the same time they were championing the rights of organized labor in industry and commerce, they were ignoring or denying them in government. Part of their rationale was the sovereignty issue and the traditional value of public employment as a privilege. Particularly during the 1930s and the 1940s, the compression of wages and salaries for public employees at a low level was justified by the presumed job security which pertained to public employment but not to private jobs. However, the prosperity of the 1950s and the 1960s, which in effect gave considerable job security in the private sector, eliminated this psychic differential.

In any event, an experienced commentator, Arnold Zack ("Impasses, Strikes, and Resolutions," *Public Workers and Public Unions*, An American Assembly Report, edited by Sam Zagoria (1972), pp. 101-102), has given the following account of public unionism in the Sixties and the reasons for its increasing militancy.

> Only in the 1960s did there begin to be felt a massive stirring of public employees as they began to object to decades of often paternalistic treatment. There were several reasons for the change. *First*, expanding demand for public service brought about a dramatic increase in public employment without a comparable rise in public income, causing a lag in public sector wages in comparison to industrial wages. *Second*, public employees began to question their exclusion from the protections afforded private employees by the National Labor Relations Act. *Third*, a younger, more militant, and more largely male influx of personnel sought to mobilize the public sector and seek benefits achieved by public sector employees in other countries and by private sector employees in this country. *Fourth*, the traditional grants of prevailing wages extended to government-employed construction workers and others under the Federal and State Davis-Bacon type laws stirred the desire of noncovered public employees to achieve wages and working conditions matching those in the private sector. *Fifth*, private sector trade unions, with stagnant or dwindling rosters, began to organize State and local employees to spread their gospel and increase their numerical

and financial strength. In so doing, they stimulated the previously passive National Education Association and its affiliates as well as the various civil service employee groups to new militance of their own. *Sixth*, President Kennedy's Executive Order 10988 of 1962, granting limited collective bargaining rights to Federal employees, was interpreted by State and local government employees as a mandate for protesting the historical denial of such rights on the State and local level. *Seventh*, a rising civil disobedience in the nation, as demonstrated in the civil rights movements, draft resistors movements, anti-poverty activities and war protests, convinced militant public employees that protest against "the establishment" and its laws was fruitful and could be a valued vehicle for bringing about desired change.

Finally, and most importantly, the demonstrated success of initial illegal strikes such as the New York transit strike and some early teachers strikes became powerful proof that the *power* to strike was of far greater relevance than the *right* to strike. As long as some employees obtained improvements from the strike, others recognized it as a useful vehicle for their protest as well. Now even police and firemen have begun to strike with increasing frequency. These factors, culminating in the increasing militancy of public sector employees, have been a powerful catalyst for change. They are forcing the legislatures into varying responses as they have struggled to deal with this new outburst of public employee protest. This rapid evolution deserves attention, not only for its historical interest, but also because it provides the background for understanding the varied legislation currently on the books and proposals for the future, all oriented toward forestalling the need for resorting to the strike in order to resolve the impasses arising in public sector employee relations.

Teachers, and I am specifically referring to those in elementary and secondary education, have been in the forefront of these general developments. (Post-secondary education labor relations is a separate story in itself.) With the population boom following Warld War II, there was a dramatic expansion in the public demand for educational services with a concurrent pressure from teachers and other educational personnel for comparable living wages for their efforts. Education also typified an area in which a younger, more militant, and more largely male influx of personnel sought to mobilize the public sector. The newer members of both the National Education Association and the American Federation of Teachers provide ample evidence to support Arnold Zack's statement above on the reasons for increased militancy. Some results of this increased militancy have also been quite evident as educational personnel have been involved in more work stoppages with more "days of idleness" due to such job actions than employees in any other governmental function.

While teacher labor relations has shared in these general developments and has even provided some of their more dramatic events, it is, in many ways, a special case with its own peculiarities. One of these peculiarities, I think, we are experiencing at this Symposium, and it is the same one I began experiencing in trying to prepare these remarks: the lack of an effective perspective on teacher labor relations within the educational "establishment." At the present time, there is no national legislated policy in this area, but 42 states have some type of existing law or policy for organized negotiations; of these, 27 mandate collective bargaining. Eight states have no established law or policy for collective negotiations of any kind. Of those that do have some law or policy, however, there are less than ten states in which the principal state education officer or agency has a direct legislated responsibility or function in labor relations. While Bob Helsby has given us some excellent reasons why some of these responsibilities can best be handled by an independent agency overseeing a general labor relations program, it is perhaps indicative of the relative institutional isolation of education--this time with a reverse twist--that the governance of its labor relations has been externally derived. The results of the survey of State Education Agency labor relations activities conducted by the Office of the Superintendent of Public Instruction, State of Illinois, indicate not only is there no special educational track for such activities, but also that little track has been laid at all to cope with labor relations problems in most State educational establishments.

As I have listened to the many excellent presentations at this Symposium on the problems of teacher labor relations and the role(s) of State Education Agencies, I must admit to a sense of uncertainty mixed with ambivalence on what I personally consider the "best" possible institutional arrangements to handle labor relations problems. With my obvious bias toward desiring to have educational institutions function within the "mainstream" of government, including its political processes, I am not particularly bothered that many of the key decisions regarding labor relations within education are not made by specifically educational agencies. There are specialized labor relations competencies and a need for consistent labor relations policies and programs across all types of employees which, perhaps, can best be realized by a specialized agency with the authority, staff and resources to perform this function.

On the other hand, it has been my observation that labor relations "problems" are only in part, and perhaps not even the most important part, a matter, technically speaking, of labor relations. They may first appear in a labor relations mode and the technical arrangements for labor relations, including the behavior of public management and employee organizations, may themselves be more a part of the problem than a part of the solution, but neither the causes or solutions of these problems are likely to be found within labor relations alone. While generally within our culture today we no longer kill the bearer of bad news, it is still very easy to view with alarm those situations which are disruptive and we tend to blame the immediate actors rather than to focus on the contributing causes which have given rise to the events. Public sector labor relations, accordingly, gets blamed for many things that, in fact, it has only revealed and which its technical arrangements, such as collective bargaining, may not be capable of resolving.

Collective bargaining, which by definition implies an adversary process with a shift from unilateral to a bilateral or even multilateral mode of organizational decision-making, throws a spotlight on many management policies and institutional relationships which previously were not generally a matter of public awareness or critical concern. While this adversary process and its public spotlight may further exacerbate the strains and stresses within government and occasion more complex, difficult and even costly decisions, it does not "cause" the frequently obsolete government structures, poor fiscal and taxing policies, inadequate government planning and coordination or the lack of management training and other factors which commonly underlie situations from which "labor problems" emerge.

Accordingly, any presumed "solutions" to labor relations problems of substance are not likely to come from the technical arrangements of that field alone, or just from the wisdom of labor relations experts. In any given area, such as teacher labor relations, there must be a mix of competencies of persons with labor relations expertise, plus those with what the psychologist, William James calls the "knowledge-of-specific acquaintance" of that field acting jointly in effective institutional relationships before significant and lasting improvements can be made. In other words, it is my thesis that labor relations problems are "systems" problems and a change in part of that system--its mode of labor relations--cannot be effectively accommodated without perhaps even more extensive changes in other parts of the system. Thus, it is not sufficient that only school personnel officers understand the impact of collective bargaining, it is more important that school board members, superintendents, principals, finance and budget officers, curriculum planners and other functionaires grasp the significance of the institutional changes they are experiencing. It is their attitudes and actions which are crucial for the accommodation to changes in labor relations.

This need, consequently, for a general systems approach which, by definition, goes beyond the institutional dimensions of just labor relations lies at the heart of much of my ambivalence at meeting like this. This Symposium is very much like the minister in church preaching to the saved: the people who need the message the most are not there to hear it, even though there may be a few sinners among us.... The necessity for greater collaboration between those in labor relations roles and the policy and operating personnel of school systems exists not only at the local and State levels, but also extends to their program counterparts in various agencies at the Federal level. When this collaboration reaches the level of funding programs which deal regularly with the institutional changes brought about by collective bargaining, many of present difficulties in teacher labor relations will be minimized.

There is another aspect of teacher labor relations which makes it a special case with some peculiarities it is increasingly sharing with other professional employees. It is special because for the first time in the history of the American labor movement a significantly large number of white collar people have organized and have really worked in a systematic way in terms of professional activities utilizing unions, or union-like organizations, as their principal instrument to achieve their goals. As stated in the work of Archie Kleingartner (especially his article, "Collective Bargaining between Salaried Professionals and Public Sector Management," Public Administration Review, March/April 1973, pp. 165-172), the issues leading to the unionization of teachers, and similar professional groups, ultimately center around the unique goals of the salaried professional and his/her relationship to the authority pattern within the management of the particular agency. While what professionals hope to derive from their work experience is not different from what all employees want, the intensity with which they seek certain goals, the particular "mix" of work-related values that will provide optimum satisfaction and the hierarchy of these goals, tends, in Kleingartner's judgment, to distinguish professionals from other groups. Clearly, he says, for most professionals, work is more than "just a job." They expect to give a good deal of effort for their work and careers, and they expect to obtain a high level of reward for their efforts.

In their strivings, Kleingartner posits two types of separate, but related goals which professionals seek to achieve in their jobs and careers. These he labels level I and level II goals. Level I goals may be defined as those relating to fairly short-run job and work rewards, such as satisfactory wages or salaries, suitable working conditions, fair treatment on the job, fringe benefits and a measure of job security. These goals are common to all categories of workers, irrespective of education, function, status and related qualities and it would be a great mistake, in Kleingartner's opinion, to under-estimate the importance of adequate satisfaction of these goals for all employees, professional and non-professional alike.

Implicitly, the importance of these level I goals has been acknowledged. Wherever collective bargaining exists in the public sector, there has been a recognition that level I goals are appropriate subjects to be brought to the bargaining table. While, as Kleingartner indicates, conflicts do develop over the employers' obligation or ability to meet employees' specific demands with respect to these goals, the principle is rarely questioned that these matters are a proper and legitimate part of the collective bargaining process.

Such has not been the case, however, with the recognition of level II goals. These goals relate importantly to long-range career and professional objectives. As Kleingartner states, there is embodied in the idea of professionalism a certain logic which, to those occupations characterized by or aspiring to its substance, inevitably propels their protective organizations to move into areas of decision-making including, but also going beyond, the collective bargaining goals of nonprofessional unions in the public or private sector. Thus, for professional workers level II goals are centrally related to their self-identity and the content of the functions performed by members of the profession. In practice they rarely become concrete objectives (although much discussed) at the level of professional ideology until level I goals are adequately met.

The substance of these level II goals, as developed by Kleingartner, centers around four concepts:

> (1) Autonomy -- In part, autonomy may be defined as the right to decide how a function is to be performed. It suggests the professional's right, indeed, obligation, to practice in his work that which he knows. He expects to be trusted--not judged--by those to whom he makes available his specialized knowledge. Once admitted to full membership in the profession, he expects to adhere to a code of conduct formulated by the profession and binding on all its members. He desires an authority structure which recognizes the characteristics of the professional role.
>
> (2) Occupational Integrity and Identification -- A professional occupation tries to delimit its boundaries in its dealings with clients and employers and to gain public recognition. It will take action to protect itself from what it perceives as threats to its prerogatives and status.

(3) Individual Satisfaction and Career Development -- Professionals want a good deal of direct control over decisions affecting their work and careers. The hierarchial authority structure of most organizations interposes a screen between the professional employees and management, with the latter making most of the critical decisions regarding the deployment of professional staff and rewards for performance.

(4) Economic Security and Enhancement -- All employees want economic security and enhancement. In the context of level II goals, what makes that category important is the notion that the level of reward should be pegged not so much to the contribution made to the employing organization directly, or the need for having adequate income to sustain a certain standard of living, but rather that rewards bear a direct relationship to the quality of service rendered. Thus, for example, the quality of classroom teaching rather than the number of students taught or seniority would be the basis from which to measure professional worth.

In his analysis, Kleingartner has sketched some comparisons between level I and level II goals. Whereas level I goals were defined as being more "now" oriented that level II goals, as some point the level II goals may become just as compelling for professionals as level I goals. In collective bargaining, level I kinds of issues may involve greater dollar cost to the employer than level II issues. On the other hand, level I issues are less frequently disputed as appropriate subjects for bargaining. The level II issues, while clearly having economic consequences, are from the employer's point of view of greatest concern because they may provide a fundamental challenge to managerial authority. For that reason, level II goals are frequently more intractable in terms of conflect over whether they are appropriate subjects for collective bargaining.

Salaried professionals, to achieve both their level I and level II goals, must enter into a direct relationship with the employer. Because the employer has many of his own goals to achieve, there may develop conflict at various points between the goals of the employees and the employers own definition of his imperatives for success and survival within his institutional world.... Public managers, accordingly, have generally entered into such bargaining relationships with salaried professional organizations with considerably less than an enthusiastic response. They have been concerned about unions becoming involved in what they consider "nonlabor" issues for fear of losing control and reducing operating efficiency. Public managers realize that ultimately their performance is evaluated in terms of what the legislative bodies and the public decide best serves their interests and their definitions of these interests may not always include an acceptance of the unions' position on many issues.

The extent to which teachers, as salaried professionals, can realize their level I and level II goals in bargaining with public managers is also, in part, a function of the characteristics of the organizational structure within which they operate. As indicated in a recent work by Hervey Juris and Peter Feuille, Police Unionism(1973) which contains a general analysis of professionalization, professional occupations are commonly practiced in one of three settings: the individual practice, the professional organization, and the non-professional organization. The doctor or lawyer in an office by himself is said to be in individual practice. The lawyer, engineer, or scientist working for a large business corporation is an example of a professional working in a non-professional organization. The law firm, medical clinic, public school or social work agency are examples of the professional working in a professional organization.

Professional organizations such as these, however, as Juris and Feuille point out, can (and must) be further distinguished by certain features of their organizational structure. For example, in medical clinics and law firms everyone continues to practice his profession whether he is a manager or an employee; however, in the public school or social work agency when an individual is promoted to supervisory status, he ceases to teach or to see clients in his capacity as a social worker--he gives up his "professional" duties to assume those of a manager and he is expected to assume the loyalties and values of his new position.

Professional organizations can also be distinguished by the degree of autonomy employees enjoy in the practice of their profession, i.e., in the terms used by Kleingartner, the extent to which employees are able to realize their level II goals. In the law firm or the medical clinic, professional practice is governed (for better or worse) by the rules of the profession as determined by the professional association or by the laws of the state as drafted, in large part, by the professional association. In the public school or the social work agency, however, employees are at least partially subordinated to an externally imposed administrative framework which tends to significantly reduce the amount of professional autonomy exercised by the individuals in these organizations. As Kleingartner indicated in his analysis, long before collective bargaining became prominent among professional employees, public employers and salaried professional organizations engaged in discussions and consultation on a wide range of level II or policy issues, as they are more commonly known. Prior to the advent of collective bargaining, however, the outcome of these discussions and consultation did not generally result in a redistribution of basic functions or power and hence they did not greatly impact upon the professional autonomy enjoyed by such employees. In an era of "rising expectations" of the value of individual worth and human dignity, it has been the unwillingness of many public employers, including school administrators, to take seriously the goals and aspirations of their salaried professionals in these discussions that has accounted for much of their motivation to join militant unions utilizing collective bargaining. Working within a public bureaucratic setting, the salaried professional realistically knows that there has to be a set of rules, but with collective bargaining these rules will be, at least in part, his rules.....

Individual members of the teaching occupation have become increasingly professionalized, i.e., in terms of their organizational affiliations, knowledge, skills, values and aspirations, but the public has not accorded the occupation professional authority in the governance of the institutional structure for the occupation itself. Commentators such as Richard H. Hall (in Occupations and the Social Structure (1969), pp. 109-110) cite two reasons for the existence of external controls. First, the service performed is a public service and its funding must be accountable according to public due process procedures and second, the public, feeling that it knows as much about the subject as those in the occupation or, even more importantly, that the service performed is a crucial social function, has retained control through lay boards and other mechanisms. The formal distinction accorded these two types of professional organizations is the "autonomous" organization (such as law firms and medical clinics) as compared to "heteronomous" organizations (such as public schools and social-work agencies.)

Within the traditional policy of education, public school systems have been heteronomous organizations in which lay boards and legislatures have established the administrative framework for school systems and have delimited the boundaries of the teaching occupation with nonprofessionals generally controlling the state boards which set standards for teaching certificates, while lay members of local boards of education set education policy in the community. At the same time, teachers aspire and seek a working environment for themselves as if society had given them the professional authority for such conditions, while the public expects professional results from the teaching occupation as though teachers had the professional responsibility for school systems.

In fact, neither the aspirations of teachers nor the expectations of the public are completely realistic. At the heart of many conflict situations in teacher labor relations is the fact that the institutional life of school systems is structured within a matrix of competing professional value systems of both teachers and administrators, plus the increasingly ineffectual inputs from lay boards which together seek to bring some semblance of governance to the situation. I am suggesting that the inputs from lay boards are increasingly ineffectual because more and more of their "policy decisions" in terms of funding and curriculum standards, etc. are being made at the state and Federal levels, while with the increasing complexities in the administration of local school systems, it is difficult for board members to be sufficiently informed to make practical decisions. In their work, boards tend to reserve for themselves the "big" decisions, while letting the school administrators handle the "little" ones, but everyday life seems to consist mostly of little ones....

For their part, school administrators, while they function as management, are themselves a separate "professionalized" track within which their own organizational affiliations, values and aspirations are no more (or no less) publicly accountable than are those of the members of teacher professional organizations. While they know that their performance is evaluated in terms of what the public decides is in its interests, school administrators, like other salaried professionals, have their own interpretations of level I and level II goals which apply to their situations. Whether they take a "hard line" or a soft stance on teacher labor relations is not just their judgment concerning local educational policy and needs, but also is their assessment of the impact of such actions on their own career mobility and status within the profession. Given the lack of job security and tenure which head school administrators seem to have, particularly in large school systems, their ambivalence in confronting controversial issues, such as labor relations, is perhaps understandable.

The governance of school systems, accordingly, is a three party "game" among a lay board and two competing sets of professionals, one of which is, nominally speaking, the agent of the board. With such teacher labor relations experts at this Symposium as Donald Wollett, Myron Lieberman and others, I yield to their greater competence to provide insight on the dynamics of this game, except to say that it would be a mistake to perceive it as a zero-sum effort. What one of the parties gains in this process is not necessarily lost by the other participants and, with the proper running of the game, all can ultimately benefit.

Objectively, it is apparent that we have not yet reached that stage which, again, is understandable. Widespread collective bargaining in the public sector is not much more than ten years old. Many public managers have little knowledge about the law, the art, or process of bargaining. As Kleingartner has indicated, public management has perhaps not fully considered the unique aspects of managing a public enterprise or the opportunities for innovation and social invention through the dynamics of a bargaining relationship. When it operates with an orientation that accepts these potentialities of collective bargaining, public management, in Kleingartner's judgment, will recognize that it is neither possible nor wise to delimit arbitrarily the scope of negotiations. In determining where authority and responsibility are to be located, management would not, he believes, look so much to who has the right, or who has done it in the past, as to what the consequences of a change are likely to be. Will it make the agency more efficient? Will it improve the quality of service which it provides to the public?

Since I was charged to give a Federal perspective, let me outline some of the ways in which the Federal government might interact with State and local governments in their public employee labor relations. There are possibly three major approaches: 1) Federal regulation, by legislation, of State and local government labor relations, 2) financial assistance programs, and 3) other types of assistance, such as technical assistance, information services and statistical data, training programs, research, and the provision of mediation and arbitration services for dispute resolution.

As I have already indicated, the first of these approaches, Federal regulation, has been opposed by virtually every nation administration in this century. The Nixon Administration continues to oppose it, as indicated most recently in the statement of Secretary of Labor James Hodgson to the Special Subcommittee on Labor (the Thompson Subcommittee), Committee on Education and Labor, U.S. House of Representatives in 1972.

In the current 93rd Congress, however, there are six major bills pending--three in the House of Representatives and three in the Senate--which could significantly change our national labor policy if they were to pass. House Resolution 8677, sponsored by William Clay (D-Mo) and Carl Perkins (D-Ky), and Senate Bill 3295, sponsored by Senator Harrison A. Williams (D-NJ) would create a new law and corresponding NLRB-type administrative agency to implement collective bargaining at the State and local levels. H.R. 9730, sponsored by Congressman Frank Thompson, Jr. (D-NJ), and Senate Bill 3294, also sponsored by Senator Williams, would amend existing private sector legislation to include State and local employees under the coverage of the NLRA. Draft amendments have also been circulated that would amend the NLRA to include public employees but would also require binding arbitration of grievances. Two additional bills, H.R. 4293, sponsored by Teno Roncalio (D-Wyo), and Senate Bill 5647, sponsored by Gale W. McGee (D-Wyo), would establish compulsory minimum standards for each State and would preserve existing merit systems yet permit collective bargaining.

The AFL-CIO and several of its public sector unions, the American Federation of Teachers (AFT), the Laborers International Union (LIU), and the Service Employees International Union (SEIU), strongly supported HR9730/S3294. CAPE, Coalition of American Public Employees, which includes the AFL-CIO's American Federation of State, County and Municipal Employees (AFSCME), the independent National Education Assn. (NEA) and the National Treasury Employees Union (NTEU), has lobbied for HR86/S3295. Senate and House hearings were conducted on these four bills. HR4293/S5674 was backed by the Assembly of Government Employees (AGE) and its affiliated state associations.

In terms of the passage of any of these bills, I would hesitate to make any forecast of what might happen. Generally, if you look at the history of the way in which major public policies have been established, it takes many years before you build up a sufficient legislative record to get an effective passage of legislation.....

The second major way in which the Federal government can impact on State and local government labor relations is in the provision of grants or other forms of financial assistance for various labor relations functions. Within the roles of State Education Agencies, there are at least two major sources from which such aid might come. The Office of Education does have grant programs and since SEA's play a major role in the delivery systems of many of these programs, most of you are probably more familiar with the details of the various titles than I am. It has been my observation, however, that these programs are mostly categorical programs at various levels of education and that "labor relations" which cuts across all categories and levels of education does not "fit" into any of them. If my thesis is correct that teacher labor relations "problems" are general systems problems within education (and in its relationships to other social institutions), then the solutions to these problems must come from within the educational establishment, including modification or additions to the Federal grant programs attempting to improve the quality of American education. If you agree that labor relations is an area in which you need assistance, then there should be grassroots effort made to establish a grant program that can deal specifically with educational labor relations, or at least work to redefine the categories in existing programs.

The second Federal grant program which SEA's can potentially utilize for labor relations activities stems from the Intergovernmental Personnel Act of 1970. Administered by the U.S. Civil Service Commission through the Bureau of Intergovernmental Personnel Programs (BIPP), this program recognizes the critical needs of State and local government for strengthened management and improved manpower resources. Designed primarily for general purpose governments, the funding for this program is based upon a State formula system with the monies being distributed within each State according to a locally developed State plan. Each State Governor has appointed an IPA designee to assist him in working with all levels of government within the State to plan the best use of available IPA grant funds. Eligible applicants who are interested in participating in the utilization of IPA funds allocated to the various States (80 percent of total IPA funds) should contact the appropriate Governor's designee.

State and local governments have responded well to this program. During the first year of IPA grant activities (fiscal year 1972), for example, thirty-eight States developed comprehensive statewide plans to benefit both State and local governments. Numerous other intergovernmental projects have been undertaken, involving combinations of local governments, State leagues of municipalities, State associations of county officials, councils governments, and similar organizations.

Inasmuch as the IPA program has been designed primarily to enhance the management capacities of general purpose governments, it unintentionally is perhaps another example of the institutional disadvantage of education's relative isolation from the "mainstream" of government. While I have been assured by IPA program officers that educational agencies and school districts are potentially eligible to participate in state plans, it is difficult to find evidence that they have sponsored much in the way of such activities. Since the priorities for this program are set locally at the State level, if you are interested you need to identify who the State designee is for the IPA program in your State, formulate your piece of the action for the State Plan, and try to negotiate your share of the program support....

The third major way in which the Federal government can impact upon State and local government labor relations is in the provision of various forms of non-financial assistance and services for resolving the technical problems arising in this field. In the provision of such assistance and services, the Federal government, while it has some unique functions, shares this responsibility and works with the different levels and types of jurisdictions and agencies, the professional associations and societies, the public employee organizations, universities, foundations, public interest groups and commercial firms which are also involved in certain aspects of these services in the public sector.

In scope and content, the description of these services can be sketched in many ways. Without going into too many details, in my own experience the forms they take may be categorized as follows: 1) technical assistance; 2) information services; 3) statistical data; 4) training programs; 5) research; 6) conferences; and 7) provision of mediation and arbitration services for dispute resolution. These services, singly or in combinations, are utilized within the various stages of the labor relations process-from establishing a public policy framework, i.e., generally by passage of legislation, the organizing and recognition stage, the negotiations phase, the contract administration period, and within efforts of dispute resolution should they become necessary at any time.

Different Federal agencies provide various combinations of these services. The Labor Management Services Administration in the U.S. Department of Labor, for example, provides technical assistance, information services, training programs, research and conference activities in public sector labor relations. The Bureau of Labor Statistics in the Department of Labor and the Governments' Division in the U.S. Bureau of the Census, Department of Commerce provide various types of statistical data relevant to this area. The Federal Mediation and Conciliation Service not only provides mediation and arbitration services, but also has an Office of Technical Services which provides technical assistance and consultation services, information and training programs which hopefully can reduce the incidence of disputes in the public sector. The Bureau of Intergovernmental Personnel Programs in the U.S. Civil Service Commission not only provides grants for local programs, but also provides technical assistance and information services for improved public personnel management. Likewise, the Labor Relations Training Center in the Bureau of Training of the Civil Service Commission not only trains Federal personnel managers, but also has opened its programs to State and local government personnel.

In most of these service areas, there are nongovernmental counterparts which provide assistance to their respective clients, either as a membership cost, a service fee, or on a tuition basis. In any event, within public sector labor relations, there are various institutional arrangements possible for obtaining the services necessary for a successful labor relations program. In the aggregate, it would seem that the various governmental and nongovernmental sources would suffice to meet such needs.

However, when you are functioning within a particular institutional setting, such as education, and in a geographic location where there may not have been much prior experience in dealing with labor relations problems, this aggregate set of services may either be unknown to you or, if known, difficult to get focused on your specific local needs. This pertains whether you are a local representative of a large public employee organization or a public school official charged with the responsibility for labor relations within your particular system. If you are, for example, the labor relations director for a large school system with many thousand employees in a State that has just passed a new law, what do you do and where can you go for help? At the State level? At the Federal level? What can and will your professional associations do for you? How helpful, for what functions, and at what cost are the management consultant firms which appear on the scene? How responsive and competent are the extension services of local universities and colleges in dealing with educational labor relations?

What I am leading to is, regardless of any eventual developments in a national labor policy for State and local employees or what part State Education Agencies may play within their respective state legal structures for labor relations, there is a creative role in the provision of support services which such agencies can uniquely perform and their role, in my judgment, will continue to grow in the future. What combinations of the seven types of support services I have sketched and others which might be appropriate is a matter of program design, but some such program must be available at the State level to all the participants in educational labor relations if the educational institution, as we know it, is going to evolve successfully within the fourth great revolution of governmental personnel systems we are currently experiencing. Perhaps we can make it part of education's contribution to the American Bicentennial Celebration. Thank you....

CONFERENCE OVERVIEW

Byron Hansford

Executive Secretary, Council of Chief State School Officers

"It's a pleasure for me to be here in Illinois, I'm almost back home, I grew up in Missouri, I worked in Michigan for five years, the last year as Deputy Superintendent of Public Instruction, so I feel very much at home here. I want, for the record, to commend Jon Peterson and the Illinois Department of Public Instruction and the Interstate Consortium for putting this program together. I think it has been demonstrated by the kind of discussion we have had that this is a timely topic. It is apparent to all of us who are here, that's it's a little bit like church where those who should be here are not here. Hopefully by putting together the proceedings of this discussion we can open up the eyes of a few other people. As far as I'm concerned I've learned a great deal as I'm sure all of you have and many of us have even changed some of our opinions. I'm sure we'll go away from here with more questions than we may have answers, but that's as it should be and if we can once identify the questions maybe we can move ahead to some of the answers.

I come to you from Watergate. I happen to live in a place called Watergate. I think most of you have heard about that and I have a lot of fun talking about it, although it is a serious situation. A month ago, I had an occasion to write a letter to the President asking for some White House tapes. Now, it wasn't quite the same - you've heard about the White House tapes and all those - but we were having a ceremony honoring the Teacher of the Year and part of that ceremony was a little session with the President and we asked to have it taped and we'd like to have a record of it. Now, I haven't gotten the tapes yet and I don't know whether to try to subpoena them or not. The Council of Chief State School Officials rents space from the N.E.A., we are housed in the N.E.A. Building and I had a little mixed feeling earlier this Spring, when for several weeks, we went through a picket line to get to our office and I had to recall that the N.E.A. people, many of them had been very active in going around the country saying "Teachers, if you don't like the situation, go strike" and here they were being accused of bad faith and bad bargaining. Apparently, they gave away everything but the kitchen sink when they bargained a couple of years ago and now there wasn't much to bargain for and they were trying to retrench a little bit.

I have very mixed feelings about the whole topic of teacher bargaining. I'm one of those administrators who was trained in all of the bad things that we've been hearing about. I sometimes think that those were in a sense, the good old days. I keep asking myself with all of this progress that we've made in recent years, are the kids any better off? Are the teachers really better off than they were previously, before we had teacher negotiations, collective bargaining, teacher militancy? In my estimation, collective negotiations of and by itself is neither good nor bad, it can be either. I think in most cases it's been rather bad, rather than good for a variety of reasons, partially because we went into collective negotiations for the wrong reasons, and also because many of the people who were engaged in collective negotiations were not skilled and therefore we did not do a very good job. I would like to remind us, however, that the labor leaders, whether you're talking about the N.E.A. or other labor leaders, are not necessarily motivated primarily by a desire to improve educational opportunities for kids. Sometimes I even wonder if they're motivated primarily to improve the situation with regard to their clients. We have to believe that they are more concerned about furthering their own professional advancement and their own career goals, than they are anything else. I wonder, too, if the average teacher, being in a system that has collective bargaining, that is highly unionized, really has more of a sense of involvement in decision making now than we had before we went into this collective bargaining mode. It seems to me that one thing we ought to be very much interested in, aside from the monetary interest of teachers, is whether teachers are actually engaged in helping to make significant educational decisions. I'm not talking about the power struggles which the organizations themselves are continually engaged in, but does the average teacher feel more of a sense of personal fulfillment, a sense of involvement, a sense of belonging to a teacher organization and making a significant contribution?

In any event, here we are in 1974 when collective bargaining is a fact of life, and it seems to me that our biggest job is to see if we can use this to improve educational opportunities for children. In all of these discussions we've had in the last couple days, I've seldom heard the word children, or educational opportunities. We seem to automatically assume that if we can get into a bargaining mode and if we can reach an agreement then something good happens, and I don't know if something good happens for youngsters or not. It seems to me that in the process of bargaining we'd better consider the welfare of youngsters, and incidentally, the welfare of those people who are hired to do something good for youngsters. I would hope that in the process we would also convince boards of education that it is not their job to save money for the taxpayers, but it is their job to invest public money wisely to try to improve educational opportunities for youngsters.

Let me conclude by addressing myself specifically to the role of the State Education Agencies. I'd like to say three things: It seems to me that anything that is as vital to the welfare of the educational program, anything that effects the educational program potentially and actually, as much as collective negotiations with employees, is something so important a State Education Agency cannot just stay out of it. Secondly, I do not personally see the role of an S.E.A. as an advocate for either side. I am not saying that we can stay out of it, I'm saying that I think our services should be available to both sides and we should not align ourselves with either side, in a sense we are an advocate for the children and perhaps for the public. Finally, seven or eight years ago here in Chicago, I recommended that negotiations be transferred to the state level and the then-President of the N.E.A. was in the meeting and he just about went through the ceiling. I do not believe the S.E.A. is the state agency that should be involved in the negotiating process. I think that there should be a separate agency of government set up specifically for that reason, because if we are to fulfill our primary purpose of S.E.A.'s, that of providing leadership and service to the schools of the states, then we have to remain in a posture where we remain in effective communication with teachers, board members, citizens, students, and anyone else that has a stake in the outcomes. Finally, I would say that I recommend that posture for S.E.A.'s because I think it's the most reasonable approach, but I also recommend it because I'm somewhat of a coward and I think intervening into this kind of a situation is a little bit like intervening in a family argument: there's no way that you can win.

SYMPOSIUM SUMMARY

Dr. Myron Lieberman, City University of New York

"I want to preface this with the statement of my bias on the whole process. I believe in bargaining primarily because of its social utility, which is protecting an individual from arbitrary and capricious government. The reason in the totalitarian countries you kick around an individual, if he doesn't have any organization to protect him. Solzhenitsyn for example, the writers union there is dominated by the government. Now, the teacher organizations could not stand up here when they were dominated by administrations. I don't believe, as a number of people have suggested here, that the rationale for bargaining has participation or involvement by teachers. Most people don't want to participate, they want their institutions to work. The reason that they participate in something is that they are unhappy but they would rather have the results without the participation than to begin erecting the means into the end. I don't want to participate in health policy, I want to be kept well and I want to get help when I need it. I don't want to participate in transportation policy, I want to get to where I want to go in the fastest possible time and I participate only if it's absolutely essential to bring about the goal, so I think that to look at this as a question of participation, even if you don't accept the rationale and justification I do, I still would have some severe questions about participation or involvement being the basic rationale.

You know I'm an elected delegate to the A.F.T. convention and to the N.E.A. convention and I twice recently have been selected to be an arbitrator and have been excluded, not by the teacher organizations but by the school board. I mention this only because there seems to be some question about the fact that I think the SEA or the State Departments ought to have a strong management role. Perhaps this will clarify things. First of all, the situation that Morris mentioned where the State Superintendent or State Department would revoke certificates to teachers on strike. I think that's completely indefensible and what adequate bargaining law and all the other things that go with it, I think then it stands as being a supporting arm for management and that doesn't mean you could throw everything to the wind and revoke a teacher certification in what's essentially an employment dispute. I think it would give a different perspective to that situation.

If the school board organizations could carry out that function of being a management arm and backing up management then I think that's a possible alternative. The trouble with it is, illustrated in New Jersey where the N.J.E.A., lobbied very hard to keep certain restrictions on how much school boards could have and what they could spend the money for. Now if a teacher organization is realistic about bargaining, as I think more and more of them are becoming, then I think they will see that just as there is a need for a strong teacher organization there is also a need for strong management and strong back-up services, and as long as there is both, I do not think the political opposition to management support would continue. By the way, it is not a line relationship I visualize between the State Department and school boards and the kind of service I'm talking about. I see now it was interpreted as saying that someone in the State Department would come down and say to the local board "Sock it to them, we'll revoke their certificates and we'll certify a whole bunch of new teachers." That I would agree should never be allowed to happen. As some of you know, I've advocated teacher control over entry so a part of our problems here has been that we're dealing with certain issues apart from a number of others and maybe if we had them all here in front of us, just as your positions seem more reasonable to me, some of the things that I and others have said might seem more reasonable to you.

Now, I don't want to turn this into simply a defense to things I've said, so let me go on and try to comment and maybe amplify on some of the comments that have been made here. I do think the advent of bargaining has led to a shift that has not really been discussed here at all. Teacher bargaining has been discussed largely in terms of the shift of power from school boards to organizations, but it really results in a more important shift of power which has been from the school boards to administrations, and that's extremely important and it's been neglected. The reason is that prior to bargaining, if you wanted to consider a policy like sabbatical leave, the school board could take it up and hear it and postpone it for a month, but you can't do that under bargaining. You have to get agreement on a package by a certain time and somebody has to have the authority to say "We agree to this, but we don't agree to that." So the boards have been forced by the dynamics of the process to delegate authority to the administration or whoever is doing the bargaining. Then there's another factor that has to be added to this, because what I'm saying is that bargaining has led to an erosion of the position of the school boards at the local level, and I think whatever decisions are made here about the role of State Departments ought to be taken in the light of what bargaining is doing to school boards, because that may change your opinion on whether the school boards can do this function. The other factor is when you bargain at the local level, what the teachers get may have implications for what other public employees in that jurisdiction get, and vice versa. You don't want to make an agreement with the teachers that is going to embarrass the Mayor, let's say, when he deals with policemen and firemen and vice versa. So there is a trend for the bargaining with public employees to be consolidated or centralized, and that also is going to weaken the position of school boards. This is something that you have to take into account if you feel it's the school boards and school boards' organizations that can take over the management support function that's been discussed here.

On the scope of negotiations, it is in some ways an exaggerated problem. It really grows out of teacher organization rivalry. There was a time when the A.F.T. supported collective bargaining and the N.E.A. opposed it. Finally the N.E.A. came around to support something they called professional negotiations and when they were asked what the difference was between professional negotiations and collective bargaining, they said collective bargaining was just a means of describing terms and conditions of employment. We think teachers should have the right to negotiate on anything that concerns them. Then of course the A.F.T. was not to be outdone in that kind of rhetoric, so they began arguing that they ought to bargain about everything and the tragedy is that we have some teacher organization leaders that have begun to believe their own propaganda. The more introspective ones know that nothing could be more fatal to a teacher organization than to begin to bargain over curriculum and educational programs and so on, it would divide the organization very quickly. Now there is at least one real crucial area of concern over the scope of negotiations. If you take a question like class size, class size as a matter of educational policy and it is also a term or condition of employment, it's both. Or what do you do with a disruptive pupil? To the teacher, what you can do with him is a term or condition of employment. Nothing drove me out of high school teaching faster than the study hall I had. It was on step level and the kids would roll marbles down on one side and somebody would roll down a marble on the other side and I was going back and forth. College teaching began to look much more attractive after trying to wrestle with that problem. Now school boards do not want what they regard as educational policies to have to be negotiated because they are labeled terms and conditions of employment. Teachers do not want their right to negotiate terms and conditions of employment taken away because the board labels them educational policy.

Now there's an area where there is a genuine problem concerning scope. Don's examples, I think point to some of the real difficulties there. I have the feeling that they are more often a problem in the abstract than they are at the bargaining table, although they do sometimes result in very difficult problems at the bargaining table. One of the problems in public bargaining that is different from the private sector that has not been dealt with here and it is not a major problem now in most districts, but it could be an enormous problem if we go to statewide bargaining. It relates to bargaining over pension and retirement benefits. You see in the public sector there is some tendency to get an agreement by agreeing to pension and retirement benefits that are paid for later. The Mayor who agrees to that, is not around when the price has to be paid. You look at the pension and retirement benefits that we have in New York and they are almost unbelievable. The average retirement in the New York City school system is, let's say $16,000.00 a year. The publicly elected official who agrees with that is possibly thinking of running for Governor or Mayor or he'll be out of the picture five, ten or twenty years down the road when that cost really starts to fall due. In the private sector you would not ordinarily find management giving it away like that because they will be struck with the consequences of that decision. This is not so much a problem right now except in those large cities which have some control over their own pension and retirement benefits. If we get statewide bargaining, there will be an enormous temptation that will have to be dealt with realistically to find some way of limiting agreements which are built on excessive pension and retirement benefits that are paid for by the generations to follow.

We haven't discussed the impact of revenue sharing which I think may be very important. Right now each organization can go down to Washington and bargain for more money in their field. If we have revenue sharing, and the money went to the states in a block, then the unions might have to begin fighting each other for a share of that, instead of concentrating on his own baliwick. We also ought to take into account some demographic factors. The teacher organizations have gotten some of the credit for gains that would have been made anyway when there was an enormous teacher shortage and school districts were bidding up the salaries. They had to get people. That's about the time in the middle 60's when collective bargaining was really taking off. Now we're turning to a demographic situation which is much more unfavorable to the teachers and part of the organizational problem that the teacher organization leaders are going to have to deal with is that the teachers have gotten accustomed to gains and now that the demography is turning in the other direction, to an oversupply, their concern is going to be hanging on to what they've got rather than to making the gains they had in the past to which they attributed, in some cases, more than they should have to the collective bargaining process.

Mr. Donahue mentioned the various revolutions in the public employment field. Let me close by stating what I think is going to be the post-collective bargaining revolution. It is going to be in ideological terms, or philosophical terms, a change from an emphasis on the distribution of value to the generation of value. Let me illustrate this. Throughout the country we have a significant reliance on the property tax, which varies from state to state and from community to community, and that's going to continue to some degree in virtually every state. And yet although we live, we, meaning the educational community, we live to a significant degree off the revenue from the property tax, there is not an educational organization of any kind in this country with a land use policy. That is to say, there isn't one of them with a policy designed to increase the real value of the property from which we live. We have policies designed to speed up the collections, to make assessments more accurately, but we do not have policies aimed at increasing the real size of the pie that is out there. So for instance, we let people buy land and we don't get involved. We have tax policies now that gear taxes on property to the value of the buildings on them. So in the slums it doesn't pay to rehabilitate, but it pays you to let it run down. The people who own slum property find their tax is reduced. We could follow the policy of taxing land according to its best use, whether the person put it to that use or not, and then the only way the person could own that land and keep it would be by putting it to that best use.

Now we have to have bargaining, I don't think we're going to get away from it because at any given point in time we're going to have to decide how to allocate whatever is available, but we are now in only the redistribution game or allocation game. The trouble with that game is this, for every winner there's a loser. Unless we get into the ballgame of relating education to the urban development process generally, we are stuck with this allocation game. Then as people see teachers as middle class or as affluent, whether rightly or wrongly, that intensifies our problems. So you see, the revolution that has got to come is going to be a revolution of how you relate education to the urban development process so that you generate more real value. Look at the attention we give to school bussing. But where were we, meaning the educational community, when the housing policies were made that brought about the segregation and stratification of communities inevitable? Let's say we bargain about what will happen to experienced teachers in the ghetto areas, but if we had different patterns of community development, these problems would not exist or they would exist in much more manageable form. Let me give you a statistic just before I close. We will probably build as much housing between now and the year 2000 as currently exists in this country. Is this housing being developed in a way that is generating stratification and all the problems of how we allocate state aid and bussing and all of that? Or are we developing residential patterns that minimize or eliminate those problems? I think that our point of intervention is too late, when I say our point of intervention is too late, I'm talking about the educational community. Presently it's at the bargaining table, it's at the redistribution level, it's not at the point where the communities are developed that way. We are going to have to see that if we want a bigger piece we're going to have to make a bigger pie.

Finally, my conviction is that we can turn cities around, we can make cities much more desirable places to live. But to do that, there are at least two things that have to be done and they both relate to bargaining, and how they relate to State Departments of Education is something you will have to decide. One is that we have to realize that there is a problem of scale. You cannot integrate one school, let's say, in Harlem. You have to have a broader canvas to deal with, a bigger piece of land to deal with if you're going to have integration. Another point is that if you're going to have integration, you have to deal not only with education, you also have to deal with transportation and the job base and the shelter base. Now when you hear what I'm about to say I don't expect you to accept it on my say so, but you can perhaps accept the fact that there are a lot of people that have come to that conclusion, and I think more are all the time: The educational community is a part of the problem, not a part of the solution in this context. The reason is to look at what we advocate, we advocate community control of schools. That means we want a smaller bit, or piece, of the area and we make it even more difficult to relate education to the other life support systems, like housing or transportation or so on. So, regarding the role of the State Department of Education, I would not want to see the Department get hung up. I think if in your state the school board organization is in a position to take over the management support function, it should. The danger the State Department of Education has been alluded to in the management support function in that it could cause a loss of constituency. When you go to the legislature for money, where is your constituency to help you get it? The teacher organizations are fighting you, that's going to make it hard to be a management support arm. That's why N.I.E. was left hanging in Congress. The American Educational Research Association pulled out of the N.E.A. just when it needed N.E.A., it's left without a constituency. But all I'm saying to you is while you get involved or if you do get involved in collective bargaining, I hope also that you will try to get your Departments to relate in a more significant way to the shelter system and the transportation system and the other life support systems in our city and to try to see that there is a game out there, the generation of value in addition to the very important one of the distribution of value. Thank you."

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